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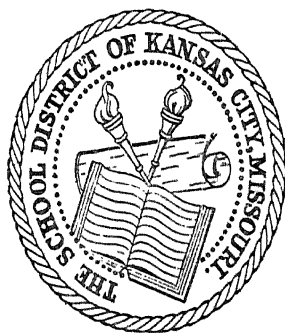
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T H E H A N D B O O K S E R I E S

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THE PACT OF PARIS

OFFICIALLY THE GENERAL PACT
FOR THE
RENUNCIATION OF WAR

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THE HANDBOOK SERIES

SERIES III

VOLUME I

SELECTED ARTICLES ON

THE PACT OF PARIS

OFFICIALLY THE GENERAL PACT
FOR THE
RENUNCIATION OF WAR

COMPILED BY
JAMES THAYER GEROULD
Librarian, Princeton University



NEW YORK
THE H. W. WILSON COMPANY
1929

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BRIEF

ARGUMENTS FOR THE PACT

- I. Civilization is today too complex to admit the use of war as an instrument of national policy.
 - A. The last war very nearly destroyed Europe.
 - 1. Millions killed.
 - 2. A generation weakened.
 - 3. The burden of debt which must hamper succeeding generations.
 - B. Another world war would be much more destructive.
 - 1. Impossible properly to control new weapons.
 - a. Submarines.
 - b. Aerial warfare.
 - c. Chemical warfare.
 - 2. Whole nations to be drafted into service.
 - C. Economic interrelations are so complex that war could not be localized.
- II. If war is to be avoided there must be international organization to prevent it.
 - A. The balance of power system is discredited.
 - B. Weaker nations must be protected.
 - C. Offending nations must be restrained.
 - D. Justice to minorities assured.
 - E. International understanding developed.
 - F. International law codified.
 - G. Disarmament.
 - H. Security.
 - I. Democratic control.

- III. The League of Nations has this as its chief purpose.
 - A. Powers still in experimental stage.
 - B. Need of gradual development.
 - 1. Locarno treaties.
 - 2. Other regional groupings.
 - a. Pan American Union.
 - 3. World Court.
 - 4. Optional clause.
 - C. Weakness due to abstention of America.
 - 1. Uncertainty as to our action makes sanctions ineffective.
 - 2. Unwillingness to give effective cooperation.
 - 3. Present trend toward more extensive cooperation.
- IV. The Pact is an evidence of our desire to resume a position of leadership in promoting international conciliation, a national policy of long standing.
- V. It represents a positive advance.
 - A. It renounces war as an instrument of national policy.
 - B. It pledges the nations to the pacific settlement of all disputes or conflicts.
 - C. World opinion is not yet ready for the entire abolition of war.
- VI. It permits war.
 - A. In self defense.
 - 1. Monroe doctrine.
 - 2. "Certain regions."
 - 3. Locarno treaties.
 - 4. French neutrality treaties.
 - B. In maintaining the sanctions of the League.
 - C. Against a treaty breaking state.

- VII. Such wars are now legal. The Pact does not change their status.
- VIII. It imposes no legal obligation.
 - A. To maintain the *status quo*.
 - B. To accept a decision of the League.
 - C. To participate in enforcement of treaty.
- IX. As a solemn affirmation of public opinion, the Pact makes it more difficult for every nation to indulge in any sort of war.
- X. It will make more easy the formulation of other international processes, implementing the Pact, which will still further limit the range of war.
- XI. It will facilitate disarmament.
- XII. To reject an instrument prepared by our constitutionally authorized representatives would stultify us completely and make exceedingly difficult any further similar diplomatic negotiations.

ARGUMENTS AGAINST THE PACT

- I. The Pact lacks definiteness and provides no sanctions.
- II. It legalizes all wars mentioned in the exceptions and qualifications.
 - A. Self defense, which may be pled at will by every nation.
 - B. In consequence of League action.
 - C. In defense of the Locarno treaties.
 - D. In maintenance of the French neutrality treaties.
 - E. In support of British policy in "certain regions."
- III. It gives European nations a right to question our interpretation of the Monroe Doctrine.

- IV. Europe assumes that we will be bound by League decisions.
- V. It gives the League a right to wage war against us, should it decide that we are an "aggressor."
- VI. We have no share in League decisions. We should either
 - A. Join the League, or
 - B. Enlarge the scope of our arbitration and conciliation treaties.
- VII. It commits us to maintain the *status quo* established by the Versailles treaty.
- VIII. It will be used as an argument against proper national defense.
- IX. It has been so weakened by the interpretations contained in the correspondence that it means nothing.

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no. 2. January, '29.

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INTRODUCTION

THE BACKGROUND OF THE PACT

Except for the family, war is the oldest of human institutions. It has been a means of redressing grievances, real or imagined; it has been a licenced form of robbery; it has been a major sport; and for many men, the business of a lifetime. From the days when the Great Cyrus launched his army against Babylon, and Belshazzar saw the handwriting on the wall, to those of Verdun and Chateau Thierry, it has formed the substance of song and story, until, in men's minds, such words as glory, power and that later concept, patriotism, have been identified with it. In all the centuries, thousands upon thousands of men have died in contests the reasons for which they did not understand and in the results of which they had no interest. They fought because of feudal and national loyalties and to satisfy an instinct for battle and carnage that is still latent, unconquered by civilization.

For better or worse, war has been, through the centuries, one of the most important implements that have moulded the progress of mankind. It is an evidence of loose thinking to assume that since there have been wars and since civilization has advanced, the relation is one of cause and effect. Another way might have been found to clear away the tottering structure of feudalism, but it was the French Revolution that did it; slavery might have been extinguished here, as in the British Empire, without bloodshed, but it was the Civil war that swept it away; Cuba needed liberation, but it is not at all to our national credit that we were too unintelligent to accomplish it without yielding to the hysteria of "Remember the Maine" and suffering the sordid horrors of Chickamauga and Montauk Point.

As the centuries have passed, and the sword and the arrow have given place to the long range gun, to bombs charged with high explosives, to poison gas and similar evidences of ingenuity in destruction, there have been those in increasing number who have questioned whether, after all, war was not an exceedingly stupid way of settling differences of opinion, and whether the black magic of the scientist is not too powerful and too destructive a force to be unrestrained. A dozen years ago we heard a great deal about the "war to end war"; and while, in the welter of passion that followed it, causes for war multiplied rather than diminished, responsible statesmen generally, and behind them millions of those who have suffered, are striving to find the road that leads to "eternal peace."

It is not an easy task. The League, potentially and actually the most effective agent therefor, crippled at its birth by the loss of the strength that American membership would have given it, still walks with halting steps. Its Covenant, because of the passion poisoned atmosphere in which it was drawn, is defective and its powers have not fully developed; but, despite this, the League has done much and will do more. It must proceed step by step. At the beginning, it was obliged to admit that, under certain conditions, it could not prevent war; but it declared that war was so serious a matter that it concerned, not the contestants alone, but all of the members of the League; and that it might call out a *posse comitatus* to suppress a nation which breaks the peace.

There have been, at almost every meeting of the Assembly, attempts to make it more difficult for nations to go to war, and to provide means for settling disputes without recourse to it. The Protocol and the Treaty of Mutual Assistance failed, but the Locarno treaties are today foundation stones of European diplomacy. The optional clause of the World Court statute provides for the submission to that tribunal of all international dis-

putes of whatever character; and today twenty-seven states, including France and Germany, have accepted it. For several years, delegations from the nations, both those within the League and without, have met periodically in an attempt to reduce the danger of war that comes from the possession of great armaments, but as yet nothing substantial has been done.

The reasons for this are evident, and nothing is gained by a failure to face them or an effort to minimize their importance. Take the case of Great Britain, for example. As the head of a vast Empire, consisting of elements to the last degree heterogeneous in character, ranging from self governing nations like Canada and Australia to colonies and mandates in every stage of civilization, its welfare, if not its very existence, depends on free and uninterrupted communication. An island kingdom, producing only a fraction of the food it eats and of the raw materials it consumes, it would be face to face with starvation in a few weeks should its seaborne supplies be cut off. To keep these routes open, it has for centuries relied on the power of the navy. The advent of the air-ship and the submarine has created an entirely new situation far more menacing than has ever been known. Despite the overwhelming preponderance of her sea power, four small German cruisers, during the early months of the war, sank 230,000 tons of shipping; and between 1914 and 1918, 11,000,000 tons were lost through submarine attack. Air-planes and Zeppelins cruised over London almost at will. Great Britain no longer has, nor can she ever regain, the "command of the sea."

Twenty miles away is France, proud of her history, her traditions and her culture, but overwhelmed by a burden of debt and surrounded by potentially hostile nations. To the north lies her ancient enemy Germany, with a population twice as great and with larger economic potentialities. To the south is Italy, her rival on

the shores of the Mediterranean and in Africa, led by a genius who has inspired the whole country with the magnificence of his nationalistic megalomania. Across the Mediterranean are vast territories inhabited by Arabs, Berbers and Negroes, and although she rules them with great skill, her hold on them is slight.

To maintain her position in Europe and the world outside, she has for generations relied on her army, and on systems of alliance and of balance of power. On the shifting and unstable foundation of the Treaty of Versailles, she has erected a system that for the moment gives her protection, and her whole policy is based on the maintenance of the *status quo*. If it is seriously disturbed at any point, the consequences are unpredictable.

Germany, smarting under the severity and—she is not alone in believing—the injustice of the Versailles treaty and the events that followed it, maimed by the loss of Eupen and Malmedy on the west and on the east by the Polish Corridor and by the decision that robbed her of Upper Silesia, her Rhineland still the garrison of 50,000 Allied troops, although the war ended ten years ago, is a giant in bonds. Sooner or later these bonds will be broken.

In all of the countries of eastern Europe, there are minorities that are crying for relief; the Austrians in the Upper Adige, the Magyars in Czechoslovakia and Rumania, the Croats in Jugoslavia and the Slavs in Transylvania. Austria demands the right of union with Germany, and Jugoslavia her promised outlet to the sea. Poland and Lithuania, since 1920, have been kept from actual war only by the restraining hand of the League. So inextricably are nationalities interwoven, so diverse are the real and imagined economic interests that, under the very best of conditions, complete justice to all is impossible. The best that can be hoped is the correction of some of the worst blunders of the treaty; and, following that, a condition of stability that will permit eco-

conomic recovery and free men's minds from the fears of invasion and from the delusion that wrongs can be righted by force of arms.

There is no panacea by which this may be accomplished, nor can it be done in a day. The conferences of statesmen at Geneva and elsewhere, the growing recognition of the World Court as a place where international justice can be secured, disarmament in such measure as is possible, all will help, but they are not enough. So long as it is respectable to kill our neighbors when we feel that they have injured us, wars will go on. They will cease when international war is no longer good form. In the Princeton University Library there is a brace of duelling pistols which was given by a father, a clergyman, to a young man who was entering college in the late eighteenth century, evidently as a part of the equipment of a gentleman going out into the world. There is no record that they were used, but the fact remains that the society of the time held that the duel was a perfectly correct way of settling disputes between gentlemen. Human nature does not change, the cynics tell us. Whether or not this is so is irrelevant. Customs do change, sometimes very quickly, and conduct is governed by them. When the civilized world is convinced that war is both criminal and foolish it will cease, probably not before.

A long step in this direction was taken in the organization of the League. America still stands outside, to be sure, but most of the civilized nations of the world have signed a solemn compact in which they have agreed that "any war or threat of war, whether immediately affecting the members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations." These nations have gone farther. On September 24,

1927, they adopted the so called Polish resolution which reads:

THE ASSEMBLY

Recognizing the solidarity which unites the community of nations;

Being inspired by a firm desire for the maintenance of peace;

Being convinced that a war of aggression can never serve as a means of settling international disputes; and is, in consequence, an international crime;

Considering that the solemn renunciation of all wars of aggression would tend to create an atmosphere of general confidence, calculated to facilitate the work undertaken with a view of disarmament,

DECLARES

- (1) That all wars of aggression are, and always shall be, prohibited.
- (2) That every pacific means must be employed to settle disputes, of every description, which may arise between states.

The Pact of Paris is hardly more than a restatement of these principles, embodied in the more solemn and binding form of an international treaty.

The idea of outlawry, or renunciation, of war is not new. Even while we were feverishly engaged in training and shipping our army to Europe, on March 7, 1918, Mr. S. O. Levinson of Chicago published an article in the *New Republic* which may be said to be the origin of the movement in America. Two years later he enlarged on the idea in a pamphlet which was, on January 19, 1922, at the request of Senator Borah, republished by the government as a Senate document. (67th Congress, 2d Session, Senate Document 115) Senator Borah's resolution embodying the principle was introduced on February 15, 1923; and, although it was never passed, it served to give publicity to the idea and to create discussion.

It was on the tenth anniversary of our entrance into the war, April 6, 1927, that M. Briand, the French Minister of Foreign Affairs, made the memorable statement in which he suggested the conclusion

of a treaty as between France and the United States, which would outlaw war. There was no immediate official response, and on April 25, President Butler of Columbia University published in the *New York Times* a ringing letter in which he demanded that our government should act on the suggestion. A few days later, the American Foundation proposed a draft treaty providing for all inclusive conciliation, arbitration and judicial settlement, and declaring that, while these processes are going on, there shall be no warlike activity "save in the one case of necessity for national defense against an act of aggression." A second suggestion was contained in a draft treaty prepared by Professor Shotwell and Professor Chamberlain of Columbia. In this the language as to the renunciation of war was more definite than in the American Foundation draft, but it made no attempt to enlarge our existing obligations as regards conciliation and arbitration.

Following a series of conversations with Americans interested in the project, M. Briand prepared his own draft, (See p. 19) which was sent to Washington under date of June 20, but which was not made public until later. There were various objections to such a bilateral treaty. In the case of a war between England and France, for example, our hands would be tied, even though our interests and our sympathies were with the British, and we would be forced into what would amount to an alliance with France. Mr. Kellogg studied the problem for several months and, after conferring with the Foreign Affairs Committee of the Senate, on December 28, he countered with a proposal (See p. 21) that the scope of the proposed treaty should be enlarged to include "all of the principle powers of the world." M. Briand replied on January 5, 1928 (See p. 23) accepting the proposal but limiting the terms of the treaty to include only "wars of aggression." He suggested also that the treaty should first be concluded between France

and the United States, and following this that the other states should be invited to adhere. Neither of these suggestions was approved by the State Department, and the reasons were set forth in Mr. Kellogg's note of January 11. (See p. 25) He called attention to the fact that M. Briand's draft of June 20 "envisaged the unqualified renunciation of all war" rather than of wars of aggression; and that, lest there should be something in the wording of the draft that might be objectionable to the other nations, it would be wiser to associate them with the preliminary negotiations. The note ended with the proposal that M. Briand's original draft treaty and the correspondence following it should be transmitted at once to the British, German, Italian and Japanese Governments for their consideration and comment. M. Briand, in his reply, dated January 21, (See p. 28) gave as a reason for the limitation of a multilateral pact to wars of aggression the fact that France and the other powers concerned, (except the United States) had assumed, under the Covenant, the Locarno and other treaties, the responsibility and the duty of repressing wars of aggression, and they could not enter into another agreement in conflict with this obligation. The force of this objection was questioned by Mr. Kellogg in his note of February 27. (See p. 32) If France was able to renounce all war in a treaty with the United States, it is hardly possible that, in a treaty to which other members of the League were parties, she could not do the same. He objected specifically to the use of the word "aggressor" and to other exceptions and qualifications on the ground that the effect of such a treaty "would be very greatly weakened and its positive value as a guaranty of peace virtually destroyed" by their admission; and he concluded with a hope that the negotiations would be continued. In Briand's reply, dated March 30, (See p. 35) he agreed to the transmission of the correspondence to the four great powers and to their inclusion in

further negotiations. He insisted, however, that the treaty must be universal in its application; that, if one of the signatory powers should fail to keep its word, the others must be released from their engagement with respect to the offender; that the treaty should not deprive any state of the right of legitimate self defense; and that it shall "not be a substitute for or prejudice in any way previous obligations" under the Covenant, the Locarno agreements and treaties of neutrality.

Identical notes were accordingly sent on April 13, (See p. 41) to the Governments of Germany, Great Britain, Italy and Japan forwarding, with copies of the correspondence, a preliminary draft of a treaty representing the views of the Department of State. A week later, the French Government submitted, as a further contribution to the discussion, an alternative draft. (See p. 45) in which the reservations outlined in the note of March 30 were specifically stated.

These reservations were discussed in detail by Secretary Kellogg in an address before the American Society of International Law in Washington on April 28. (See p. 112) He held that all of them were, in effect, implicitly provided for in the American text. The right of defense is inherent in sovereignty and does not require restatement; the Covenant authorizes, but does not compel, states to go to war; any nation which violates the treaty automatically deprives itself of such protection as it provides. Without question, this unofficial statement of his views did a great deal to reassure the European powers.

The German Government was the first to send a reply. Stresemann's note to the American Ambassador on April 27, (See p. 48) was an unqualified acceptance of the American draft. He expresses his conviction that the obligation which it imposes does not conflict with the Locarno or other treaties; that it does not deprive a nation of the right of self defense; and that, upon viola-

tion of the treaty, the other powers will resume their freedom of action in reference to the offender. This position, it will be noted, coincides exactly with the views of Mr. Kellogg in his speech on the following day, which has already been quoted.

Mussolini's note of May 4, (See p. 50) mentions a plan for a meeting of international jurists which had been informally suggested by France for the discussion of the legal aspects of the treaty. As this proposal met with no favor whatever in Washington and Berlin, it was promptly dropped.

In general, public opinion in Great Britain supported the American rather than the French draft, but the Government were in a difficult position. They were anxious in no way to offend the feelings of the French, and they had in mind certain reservations of their own. Their reply on May 19, (See p. 51) expresses cordial sympathy with the proposal, and the opinion that there is no serious divergence between the two drafts. The language of Mr. Kellogg's speech, which had been brought informally to their attention by Ambassador Houghton, made it clear that there would be no conflict of opinion regarding the right of self defense, or the release of signers from their obligations should one of their number provoke a war. Declaring that respect for the obligations arising out of the Covenant of the League of Nations and the Locarno treaties is fundamental, and that their position in regard to them is identical with that expressed in the German reply, they go on to say that "there are certain regions in the world, the welfare and integrity of which constitute a special and vital interest for our peace and welfare. Their protection against attack is, to the British Empire, a measure of self defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty with the distinct understanding that it does not prejudice their freedom of action in this respect."

It will be noted that the reply was in the name of His Majesty's Government in Great Britain, and one of the reasons why it was so long delayed was that there might be opportunity to consult the Dominions. Although they had not joined in the Locarno treaties, their favorable attitude in this case led Sir Austen Chamberlain tactfully to suggest that they be asked to be among the original signers of the treaty. He intimated further that it would be desirable to include the remaining Locarno powers in the invitation.

The last of the notes to be received was that of Japan. (May 26. See p. 58) It was a cordial and unreserved acceptance. It mentioned the right of self defense and the obligations under the Covenant—and curiously enough, the Locarno treaties, of which they are not signatories—but only to say that they understood that the proposed pact was compatible with them.

Even before the Japanese note has arrived, our Government acted on the British suggestion that the invitation should be extended to the Dominions and to India. With Canada and the Irish Free State we communicated directly through our ministers there resident; to the other divisions of the Empire the invitation was extended through Ambassador Houghton and the British Foreign Secretary. The replies, dated between May 30 and June 15, (See p. 60-66) while differing in form, added nothing very material to the discussion.

With these eleven documents (including the French draft of the treaty) in hand, our Government was in a position to take the next step. It accordingly dispatched on June 23, (See p. 67) identic notes to the Governments of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, Irish Free State, Italy, Japan, New Zealand, Poland and South Africa, submitting a slightly modified draft of the treaty, and expressing the hope that the Government addressed would be able to accept it "without qualification or

reservation." In this note was incorporated that portion of Mr. Kellogg's address before the American Society of International Law which relates to self defense, the League Covenant, the Locarno treaties and other treaties of neutrality, relations with a treaty breaking state and universality of acceptance, thus giving these statements full official status. The document is further interesting in that, when enumerating the powers addressed, it includes, in the same alphabetical order, the Dominions, India and Great Britain, thus formally acknowledging their equal treaty making competence and status.

The modifications made in the treaty were confined to the preamble. The first two paragraphs were re-drafted in somewhat more simple and forceful language, but they were in substance the same. From the third, however, Mr. Kellogg deleted the phrases specifically "condemning" and "renouncing" war, which appear later in Article 1, and substituted therefor a sentence in which he incorporated two entirely different ideas. The first, that all changes in international relations should "be the result of a peaceful and orderly process," is implied in Article II. The second, that "any signatory power which seeks to promote its national interests by the resort to war should be denied the benefits furnished by this treaty" is his sole concession to the objections of France and the other nations.

The preamble of a treaty imposes only a moral obligation on the signers; the legal obligation is contained in the articles that follow. In two sentences, the structure of law and of custom which, through the centuries, has been erected about the institution of war, is destroyed.

ARTICLE I

The High Contracting Parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

No. 1

ARTICLE II

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatsoever origin they may be, which may arise among them, shall never be sought except by pacific means.

The last article relates solely to the method of ratification.

The replies of the fourteen nations addressed were received between July 11 and July. 30. (See p. 75-93) They contain little that was new. Several of them reiterate their understanding that the treaty does not conflict with the right of self defense, their obligations under the Covenant and the treaties, and that a violation of the treaty by any power restores to the others their freedom of action in reference to it. Both the British and the French assert that the nation concerned is alone competent to decide whether circumstances require recourse to war in self defense; and the British renew their statement regarding "certain regions." All of the notes, except that from Canada, refer in one way or another to Mr. Kellogg's speech as containing an interpretation of the treaty which in effect has become a part of it. While Mr. Kellogg was technically correct in his statement to the press on August 8 that "interpretations to the multilateral treaty to renounce war are in no way a part of the pact and cannot be considered as reservations," they are, nevertheless, as binding on the signatory nations as if they had been included.

On August 27, the treaty was signed in Paris. The United States, France, Belgium, Germany, Canada, Poland and Czechoslovakia were represented by their foreign ministers, the other nations by high officials. The ceremony took place in the Salle de l'Horloge of the French Foreign Office on the Quai d'Orsay. M. Briand presided and made the only speech. When he had finished, the plenipotentiaries affixed their signatures in the alphabetic order of the French forms of the national names, beginning with Germany (Alle-

magne) and ending with Czechoslovakia (Tchécoslovaquie.) The document has both an English and a French text. It is to be kept in the archives at Washington and certified copies are to be furnished to the other nations.

On the day following, August 28, the Department of State dispatched to forty-eight nations, not included among the original signers, an invitation to adhere to the treaty. (See p. 94) On account of the fact that the Soviet Government is not recognized in Washington, Russia was not included among their number, but the invitation reached it through the agency of France. By the end of the year, eight states had officially adhered to the pact, thirty-five had announced their intention to do so, and six, except for Afghanistan, all South American countries, had not replied. Of those which adhered, the reply of the Soviet Government was of the largest significance. After reciting their own efforts to secure disarmament and bilateral treaties prohibiting war, regret is expressed that the treaty did not provide for disarmament; and that the text was not more clear. It should have included not only war, in its juridical sense, but such military actions as intervention, blockade, military occupation of foreign territory, etc. The reservation of Great Britain regarding "certain regions," they declare that they cannot accept, nor can they be bound by those which relate to the Covenant. Notwithstanding these statements, their later note (September 6) in which they announce their formal acceptance of the pact, was unconditional in its terms.

In the pages that follow is presented a complete documentary history of the treaty and a selection of commentaries upon it representing various types of opinion, both American and British.

The three speeches by Secretary Kellogg, which head the list, are of the greatest importance, not only because he was the author of the treaty and directed the negotia-

tions, but because, in the case of the address before the American Society of International Law, portions of it were later incorporated in the official correspondence.

Of scarcely less value is the Historical commentary by Professor James T. Shotwell. It is an open secret that Professor Shotwell was one of a small group of Americans who, acting as private citizens, had not a little to do with encouraging M. Briand to initiate the correspondence.

An authoritative study of the Pact from the standpoint of international law, prepared by the staff of the Foreign Policy Association, follows. The meaning of the term "self defense" is discussed at length, as is also the legal standing of the various interpretations occurring in the correspondence and the probable effect of the Pact on international relations. The legal aspects of the Pact are further considered in articles by Professor C. G. Fenwick and Honorable David Jayne Hill, who favor the treaty, and by Professor Edwin M. Borchard, who opposes it. Frank H. Simonds calls attention to the fact that the European conception of the pact differs widely from the American, and Oscar J. Crosby is definitely hostile to it.

The British point of view is expressed first in a short article by Viscount Cecil of Chelwood, whose services in the promotion of peace are surpassed by none. Liberal opinion is well represented by the anonymous article from the *Round Table* and by that of the Right Honorable H. A. L. Fisher, while Mr. J. H. Harley and Mr. J. O. P. Bland adopt a somewhat critical attitude.

Continental opinion is analysed by Mr. Arthur Bul-lard, and, so far as it is expressed in the press, by Mr. John Bakeless.

To all of these authors, and to the publications in which their articles have appeared, grateful acknowledgment is made.

JAMES THAYER GEROULD

December, 1928

DIPLOMATIC DOCUMENTS
REPRINTED FROM THE RECORD AS PUBLISHED
BY THE DEPARTMENT OF STATE

THE TEXT OF THE GENERAL PACT FOR THE RENUNCIATION OF WAR—SIGNED AT PARIS AUGUST 27, 1928

The President of the German Reich, the President of the United States of America, His Majesty the King of the Belgians, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland, the President of the Czechoslovak Republic,

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present Treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civi-

lized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a Treaty and for that purpose have appointed as their respective Plenipotentiaries: [Here follow the names]

ARTICLE 1

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3

The present Treaty shall be ratified by the High Contracting Parties named in the Preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at Washington.

This Treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other Powers of the world. Every instrument evidencing the adherence of a Power shall be deposited at Washington and the Treaty shall immediately upon such deposit become effective as between the Power thus adhering and the other Powers parties hereto.

It shall be the duty of the Government of the United States to furnish each Government named in the Preamble and every Government subsequently adhering to this Treaty with a certified copy of the Treaty and of every instrument of ratification or adherence. It shall also be

the duty of the Government of the United States telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective Plenipotentiaries have signed this Treaty in the French and English languages both texts having equal force, and hereunto affix their seals.

Done at Paris, the twenty-seventh day of August in the year one thousand nine hundred and twenty-eight.

[SEAL] GUSTAV STRESE-	[SEAL] C. J. PARR
MANN	[SEAL] J. S. SMIT
[SEAL] FRANK B. KEL-	[SEAL] LIAM T. MACCOS-
LOGG	GAIR
[SEAL] PAUL HYMANS	[SEAL] CUSHENDUN
[SEAL] ARI BRIAND	[SEAL] G. MANZONI
[SEAL] CUSHENDUN	[SEAL] UCHIDA
[SEAL] W. L. MACKEN-	[SEAL] AUGUST ZALESKI
ZIE KING	[SEAL] D ^r EDUARD BENEŠ
[SEAL] A. J. McLACHLAN	

NOTES EXCHANGED BETWEEN THE UNITED STATES AND OTHER POWERS, JUNE 20, 1927-AUGUST 27, 1928

*Draft of pact of perpetual friendship between France
and the United States transmitted to the Secretary
of State by M. Briand through the American
Ambassador at Paris*

[Translation]

June 20, 1927

The President of the French Republic and the President of the United States of America,

Equally desirous of affirming the solidarity of the French people and the people of the United States of

America in their wish for peace and in their renunciation of a recourse to arms as an instrument of their policy towards each other,

And having come to an agreement to consecrate in a solemn act these sentiments as much in accord with the progress of modern democracies as with the mutual friendship and esteem of two nations that no war has ever divided and which the defense of liberty and justice has always drawn closer,

Have to this end designated for their plenipotentiaries, to wit:

The President of the French Republic:— — — — —

The President of the United States of America:— — — — —

Who, after having exchanged their powers, recognized in good and due form, have agreed upon the following provisions:

ARTICLE 1

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

ARTICLE 2

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

ARTICLE 3

The present act shall be ratified. The ratifications thereof shall be exchanged at — — — — — as soon as possible and from that time it shall have full force and value.

In witness whereof the above-named plenipotentiaries have signed the present act and have thereunto set their seal.

Done at ——— in two copies (each drawn up both in French and English and having equal force), the ——— nineteen hundred and twenty-seven.

(Signatures and seals)

The Secretary of State to the French Ambassador
(Clandel)

WASHINGTON, December 28, 1927

EXCELLENCY: I have the honor to refer to the form of treaty entitled "Draft of pact of perpetual friendship between France and the United States," which his excellency the Minister of Foreign Affairs was good enough to transmit to me informally last June through the instrumentality of the American Ambassador at Paris.

This draft treaty proposes that the two powers should solemnly declare in the name of their respective peoples that they condemn recourse to war, renounce it as an instrument of their national policy towards each other, and agree that a settlement of disputes arising between them, of whatsoever nature or origin they may be, shall never be sought by either party except through pacific means. I have given the most careful consideration to this proposal and take this occasion warmly to reciprocate on behalf of the American people the lofty sentiments of friendship which inspired the French people, through his excellency M. Briand, to suggest the proposed treaty.

The Government of the United States welcomes every opportunity for joining with the other governments of the world in condemning war and pledging anew its faith in arbitration. It is firmly of the opinion that every international endorsement of arbitration, and

every treaty repudiating the idea of a resort to arms for the settlement of justiciable disputes, materially advances the cause of world peace. My views on this subject find a concrete expression in the form of the arbitration treaty which I have proposed in my note to you of December 28, 1927, to take the place of the arbitration convention of 1908. The proposed treaty extends the scope of that convention and records the unmistakable determination of the two Governments to prevent any breach in the friendly relations which have subsisted between them for so long a period.

In view of the traditional friendship between France and the United States—a friendship which happily is not dependent upon the existence of any formal engagement—and in view of the common desire of the two nations never to resort to arms in the settlement of such controversies as may possibly arise between them, which is recorded in the draft arbitration treaty just referred to, it has occurred to me that the two Governments, instead of contenting themselves with a bilateral declaration of the nature suggested by M. Briand, might make a more signal contribution to world peace by joining in an effort to obtain the adherence of all the principal powers of the world to a declaration renouncing war as an instrument of national policy. Such a declaration, if executed by the principal world powers, could not but be an impressive example to all the other nations of the world, and might conceivably lead such nations to subscribe in their turn to the same instrument, thus perfecting among all the powers of the world an arrangement heretofore suggested only as between France and the United States.

The Government of the United States is prepared, therefore, to concert with the Government of France with a view to the conclusion of a treaty among the principal powers of the world, open to signature by all nations, condemning war and renouncing it as an instru-

ment of national policy in favor of the pacific settlement of international disputes. If the Government of France is willing to join with the Government of the United States in this endeavor, and to enter with the United States and the other principal powers of the world into an appropriate multilateral treaty, I shall be happy to engage at once in conversations looking to the preparation of a draft treaty following the lines suggested by M. Briand for submission by France and the United States jointly to the other nations of the world.

Accept [etc.]

FRANK B. KELLOGG

The French Ambassador (Clandel) to the Secretary of State

[Translation]

WASHINGTON, January 5, 1928

MR. SECRETARY OF STATE: By a letter of December 28 last, your excellency was kind enough to make known the sentiments of the Government of the United States concerning the suggestion of a treaty proposed by the Government of the Republic in the month of June 1927, with a view to the condemnation of war and the renunciation thereof as an instrument of national policy between France and the United States.

According to your excellency, the two governments, instead of limiting themselves to a bilateral treaty, would contribute more fully to the peace of the world by uniting their efforts to obtain the adhesion of all the principal powers of the world to a declaration renouncing war as an instrument of their national policy.

Such a declaration, if it were subscribed to by the principal powers, could not fail to be an impressive example to all the nations of the world and might very well lead them to subscribe in their turn to the same pact, thus bringing into effect as among all the nations of

the world an arrangement which at first was only suggested as between France and the United States.

The Government of the United States, therefore, would be disposed to join the Government of the Republic with a view to concluding a treaty between the principal powers of the world which, open to the signature of all nations, would condemn war, would contain a declaration to renounce it as an instrument of national policy and would substitute therefor the pacific settlement of disputes between nations.

Your excellency added that if the Government of the Republic agrees thus to join the Government of the United States and the other principal powers of the world in an appropriate multilateral treaty, your excellency would be happy to undertake immediately conversations leading to the elaboration of a draft inspired by the suggestions of M. Briand and destined to be proposed jointly by France and the United States to the other nations of the world.

The Government of the Republic appreciated sincerely the favorable reception given by the Government of the United States to the proposal of M. Briand. It believes that the procedure suggested by your excellency and carried out in a manner agreeable to public opinion and to the popular sentiment of the different nations would appear to be of such nature as to satisfy the views of the French Government. It would be advantageous immediately to sanction the general character of this procedure by affixing the signatures of France and the United States.

I am authorized to inform you that the Government of the Republic is disposed to join with the Government of the United States in proposing for agreement by all nations a treaty to be signed at the present time by France and the United States and under the terms of which the high contracting parties shall renounce all war of aggression and shall declare that for the settle-

ment of differences of whatever nature which may arise between them they will employ all pacific means. The high contracting parties will engage to bring this treaty to the attention of all states and invite them to adhere.

The Government of the Republic is convinced that the principles thus proclaimed cannot but be received with gratitude by the entire world, and it does not doubt that the efforts of the two governments to insure universal adoption will be crowned with full success.

Accept [etc.]

CLAUDEL

The Secretary of State to the French Ambassador
(Claudel)

WASHINGTON, *January 11, 1928*

EXCELLENCY: In the reply which your Government was good enough to make to my note of December 28, 1927, his excellency the Minister of Foreign Affairs summarized briefly the proposal presented by the Government of the United States, and stated that it appeared to be of such a nature as to satisfy the views of the French Government. In these circumstances he added that the Government of the Republic was disposed to join with the Government of the United States in proposing for acceptance by all nations a treaty to be signed at the present time by France and the United States, under the terms of which the high contracting parties should renounce all wars of aggression and should declare that they would employ all peaceful means for the settlement of any differences that might arise between them.

The Government of the United States is deeply gratified that the Government of France has seen its way clear to accept in principle its proposal that, instead of the bilateral pact originally suggested by M. Briand,

there be negotiated among the principal powers of the world an equivalent multilateral treaty open to signature by all nations. There can be no doubt that such a multilateral treaty would be a far more effective instrument for the promotion of pacific relations than a mere agreement between France and the United States alone, and if the present efforts of the two Governments achieve ultimate success, they will have made a memorable contribution to the cause of world peace.

While the Government of France and the Government of the United States are now closely in accord so far as the multilateral feature of the proposed treaty is concerned, the language of M. Briand's note of January 5, 1928, is in two respects open to an interpretation not in harmony with the idea which the Government of the United States had in mind when it submitted to you the proposition outlined in my note of December 28, 1927. In the first place, it appears to be the thought of your Government that the proposed multilateral treaty be signed in the first instance by France and the United States alone and then submitted to the other powers for their acceptance. In the opinion of the Government of the United States this procedure is open to the objection that a treaty, even though acceptable to France and the United States, might for some reason be unacceptable to one of the other great powers. In such event the treaty could not come into force and the present efforts of France and the United States would be rendered abortive. This unhappy result would not necessarily follow a disagreement as to terminology arising prior to the definitive approval by any Government of a proposed form of treaty, since it is by no means unreasonable to suppose that the views of the governments concerned could be accommodated through informal preliminary discussions and a text devised which would be acceptable to them all. Both France and the United States are too deeply interested in the success of their

endeavors for the advancement of peace to be willing to jeopardize the ultimate accomplishment of their purpose by incurring unnecessary risk of disagreement with the other powers concerned, and I have no doubt that your Government will be entirely agreeable to joining with the Government of the United States and the governments of the other powers concerned for the purpose of reaching a preliminary agreement as to the language to be used in the proposed treaty, thus obviating all danger of confronting the other powers with a definitive treaty unacceptable to them. As indicated below, the Government of the United States would be pleased if the Government of France would agree that the draft treaty submitted by M. Briand last June should be made the basis of such preliminary discussions.

In the second place, and this point is closely related to what goes before, M. Briand's reply of January 5, 1928, in expressing the willingness of the Government of France to join with the Government of the United States in proposing a multilateral treaty for the renunciation of war, apparently contemplates that the scope of such treaty should be limited to wars of aggression. The form of treaty which your Government submitted to me last June which was the subject of my note of December 28, 1927, contained no such qualification or limitation. On the contrary it provided unequivocally for the renunciation by the high contracting parties of all war as an instrument of national policy in the following terms:

ARTICLE I

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

ARTICLE 2

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

I am not informed of the reasons which have led your Government to suggest this modification of its original proposal, but I earnestly hope that it is of no particular significance and that it is not to be taken as an indication that the Government of France will find itself unable to join with the Government of the United States in proposing, as suggested above, that the original formula submitted by M. Briand which envisaged the unqualified renunciation of all war as an instrument of national policy be made the subject of preliminary discussions with the other great powers for the purpose of reaching a tentative agreement as to the language to be used in the proposed treaty.

If your Government is agreeable to the plan outlined above and is willing that further discussions of the terms of the proposed multilateral treaty be based upon the original proposal submitted to me by M. Briand last June, I have the honor to suggest that the Government of France join with the Government of the United States in a communication to the British, German, Italian and Japanese Governments transmitting the text of M. Briand's original proposal and copies of the subsequent correspondence between the Governments of France and the United States for their consideration and comment, it being understood, of course, that these preliminary discussions would in no way commit any of the participating Governments pending the conclusion of a definitive treaty.

Accept [etc.]

FRANK B. KELLOGG

The French Ambassador (Claudel) to the Secretary of State

[Translation]

WASHINGTON, January 21, 1928

MR. SECRETARY OF STATE: Your excellency was pleased to inform me in your note of the 11th instant, of

the considerations suggested to you by my letter of January 5 in answer to your communication of December 28, 1927. My Government has asked me to express to you its satisfaction at the harmonizing, thanks to your excellency, of the views of the two Governments concerning the best method of accomplishing a project upon the essential principles of which they apparently are in agreement.

The original French proposal of June 1927, contemplating an act confined to France and the United States, appeared to the French Government to be both desirable and feasible by reason of the historical relations between the two Republics.

The American Government was only willing, however, to embody the declaration proposed by the French Government in the preamble of the Franco-American arbitration convention now in process of renewal, and considered on the other hand, for reasons of its own which the French Government has not failed to take into account, that it would be opportune to broaden this manifestation against war and to make it the subject of a separate act in which the other powers would be invited to participate.

The Government of the Republic was not opposed to this expansion of its original plan, but it could not but realize, and it felt bound to point out that the new negotiation as proposed would be more complex and likely to meet with various difficulties.

The question as to whether there would be any advantage in having such an instrument, of a multipartite nature, signed in the first place by France and the United States, or else first elaborated by certain of the principal powers of the world and then presented to all for their signature, is essentially one of procedure.

The Government of the Republic offered a suggestion upon this point only because of its desire more speedily and more surely to achieve the result which it seeks in

common with the United States. This is tantamount to saying that it is ready to concur in any method which may appear to be the most practicable.

There is, however, a situation of fact to which my Government has requested me to draw your particular attention.

The American Government cannot be unaware of the fact that the great majority of the powers of the world, and among them most of the principal powers, are making the organization and strengthening of peace the object of common efforts carried on within the framework of the League of Nations. They are already bound to one another by a Covenant placing them under reciprocal obligations, as well as by agreements such as those signed at Locarno in October 1925, or by international conventions relative to guaranties of neutrality, all of which engagements impose upon them duties which they cannot contravene.

In particular, your excellency knows that all states members of the League of Nations represented at Geneva in the month of September last, adopted, in a joint resolution tending to the condemnation of war, certain principles based on the respect for the reciprocal rights and duties of each. In that resolution the powers were led to specify that the action to be condemned as an international crime is aggressive war and that all peaceful means must be employed for the settlement of differences, of any nature whatsoever, which might arise between the several states.

This is a condition of affairs which the United States, while a stranger thereto, cannot decline to take into consideration, just as must any other state called upon to take part in the negotiation.

Furthermore, the United States would not in any way be bound thereby to the provisions of the Covenant of the League of Nations. The French proposal of June last looking to the conclusion of a bilateral compact,

had been drawn up in the light of the century-old relations between France and the United States; the French Government still stands ready to negotiate with the American Government on the same conditions and on the same basis. It has never altered its attitude in that respect. But when confronted by the initiative of the United States in proposing a multipartite covenant, it had to take into consideration the relations existing among the various powers which would be called upon to participate therein. This it has done, with the object of assuring the success of the treaty contemplated by the United States. Its suggestions of January 5 as to the terms of the multipartite treaty are inspired by the formula which has already gained the unanimous adherence of all of the states members of the League of Nations, and which for that very reason might be accepted by them with regard to the United States, just as it has already been accepted among themselves.

This is the explanation of our proposal of January 5.

The Government of the Republic has always, under all circumstances, very clearly and without mental reservation declared its readiness to join in any declaration tending to denounce war as a crime and to set up international sanctions susceptible of preventing or repressing it. There has been no change in its sentiments in that respect: its position remains the same. Your excellency may therefore be assured of its sincere desire to respond to the idea of the American Government and to second its efforts to the full extent compatible with the situation of fact created by its international obligations. It is this preoccupation which inspired the formula proposed on January 5, a formula which does indeed seem to be the most apt at this time to assure the accomplishment of the American project. The Government of the Republic accordingly can not but hope that the American Government will share this view. Subject to these observations, the Government of the

Republic would, moreover, very gladly welcome any suggestions offered by the American Government which would make it possible to reconcile an absolute condemnation of war with the engagements and obligations assumed by the several nations and the legitimate concern for their respective security.

Pray accept [etc.]

CLAUDEL

*The Secretary of State to the French Ambassador
(Claudel)*

WASHINGTON, February 27, 1928

EXCELLENCY: Our recent discussions of the question whether the United States and France could join in suggesting to the other principal powers of the world the conclusion of a treaty proscribing war as an instrument of national policy in their mutual relations have been brought by your note of January 21, 1928, to a point where it seems necessary, if success is to be achieved, to examine the problem from a practical point of view.

It is evident from our previous correspondence that the Governments of France and the United States are of one mind in their earnest desire to initiate and promote a new international movement for effective world peace, and that they are in agreement as to the essential principles of the procedure to be followed in the accomplishment of their common purpose. As I understand your note of January 21, 1928, the only substantial obstacle in the way of the unqualified acceptance by France of the proposals which I submitted in my notes of December 28, 1927, and January 11, 1928, is your Government's doubt whether as a member of the League of Nations and a party to the treaties of Locarno and other treaties guaranteeing neutrality, France can agree

with the United States and the other principal world powers not to resort to war in their mutual relations, without *ipso facto* violating her present international obligations under those treaties. In your excellency's last note this question was suggested for consideration.

Without, of course, undertaking formally to construe the present treaty obligations of France, I desire to point out that if those obligations can be interpreted so as to permit France to conclude a treaty with the United States such as that offered to me last July by M. Briand and offered again in your note of January 21, 1928, it is not unreasonable to suppose that they can be interpreted with equal justice so as to permit France to join with the United States in offering to conclude an equivalent multilateral treaty with the other principal powers of the world. The difference between the bilateral and multilateral form of treaty having for its object the unqualified renunciation of war as an instrument of national policy, seems to me to be one of degree and not of substance. A Government free to conclude such a bilateral treaty should be no less able to become a party to an identical multilateral treaty since it is hardly to be presumed that members of the League of Nations are in a position to do separately something they cannot do together. I earnestly hope, therefore, that your Government, which admittedly perceives no bar to the conclusion of an unqualified antiwar treaty with the United States alone, will be able to satisfy itself that an equivalent treaty among the principal world powers would be equally consistent with membership in the League of Nations. If, however, members of the League of Nations cannot, without violating the terms of the Covenant of the League, agree among themselves and with the Government of the United States to renounce war as an instrument of their national policy, it seems idle to discuss either bilateral or multilateral treaties unreservedly renouncing war. I am reluctant to believe, however,

that the provisions of the Covenant of the League of Nations really stand in the way of the cooperation of the United States and members of the League of Nations in a common effort to abolish the institution of war. Of no little interest in this connection is the recent adoption of a resolution by the Sixth International Conference of American States expressing in the name of the American Republics unqualified condemnation of war as an instrument of national policy in their mutual relations. It is significant to note that of the twenty-one states represented at the Conference, seventeen are members of the League of Nations.

I trust, therefore, that neither France nor any other member of the League of Nations will finally decide that an unequivocal and unqualified renunciation of war as an instrument of national policy either violates the specific obligations imposed by the Covenant or conflicts with the fundamental idea and purpose of the League of Nations. On the contrary, is it not entirely reasonable to conclude that a formal engagement of this character entered into by all of the principal powers, and ultimately, I trust, by the entire family of nations, would be a most effective instrument for promoting the great ideal of peace which the League itself has so closely at heart? If, however, such a declaration were accompanied by definitions of the word "aggressor" and by exceptions and qualifications stipulating when nations would be justified in going to war, its effect would be very greatly weakened and its positive value as a guaranty of peace virtually destroyed. The ideal which inspires the effort so sincerely and so hopefully put forward by your Government and mine is arresting and appealing just because of its purity and simplicity; and I cannot avoid the feeling that if governments should publicly acknowledge that they can only deal with this ideal in a technical spirit and must insist upon the adoption of reservations impairing, if not utterly destroying

the true significance of their common endeavors, they would be in effect only recording their impotence, to the keen disappointment of mankind in general.

From the broad standpoint of humanity and civilization, all war is an assault upon the stability of human society, and should be suppressed in the common interest. The Government of the United States desires to see the institution of war abolished, and stands ready to conclude with the French, British, Italian, German and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments, binding the parties thereto not to resort to war with one another. The precise language to be employed in such a treaty is a matter of indifference to the United States so long as it clearly and unmistakably sets forth the determination of the parties to abolish war among themselves. I therefore renew the suggestion contained in my note of January 11, 1928, that the Government of France join with the Government of the United States in transmitting to the British, Italian, German and Japanese Governments for their consideration and comment the text of M. Briand's original proposal, together with copies of the subsequent correspondence between France and the United States as a basis for preliminary discussions looking to the conclusion of an appropriate multilateral treaty proscribing recourse to war.

Accept [etc.]

FRANK B. KELLOGG

The French Ambassador (Clandel) to the Secretary of State

[Translation]

WASHINGTON, *March 30, 1928*

MR. SECRETARY OF STATE: In reply to your note of February 27 last regarding the proposal for a multilateral treaty proscribing war, I have the honor to inform

your excellency that M. Briand has been pleased to find in the observations which you have submitted for his consideration a new and cordial affirmation of the common inspiration which animates our two Governments equally anxious to cooperate in an international movement toward the effective establishment of peace in the world. Assured of such a solidarity in the pursuit of an identical purpose, M. Briand remains convinced, as does your excellency, that a mutually acceptable formula may well result from the exchange of views which has taken place up to now between our two Governments, if on both sides there is a disposition to adhere to those essential realities which must be preserved in this discussion, by subordinating thereto those differences of form to which questions of terminology not affecting the substance of the discussion may upon analysis be reduced.

That is to say, that the French Government at this point of the discussion, when all the aspects of the problem have been examined, proposes to adopt as practical a point of view as possible and to facilitate as far as it can the effort of the American Government in the direction of an immediate decision.

The observations which M. Briand has ventured to offer in support of his last suggestion were inspired by a very sincere desire to facilitate in a practical manner the realization of the proposal for the contemplated multilateral treaty by pointing out the conditions best adapted to bring about the consent thereto of all the Governments whose agreement is necessary. The French wording, therefore, tending to limit to war of aggression the proscription proposed in the form of a multilateral rather than a bilateral treaty, was intended to obviate in so far as the American plan was concerned those serious difficulties which would assuredly be encountered in practice. In order to pay due regard to the international obligations of the signatories, it was not possible, as soon as it became a question of a multilateral treaty, to impart

thereto the unconditional character desired by your excellency without facing the necessity of obtaining the unanimous adherence of all the existing states, or at least of all the interested states, that is to say, those which by reason of their situation are exposed to the possibility of a conflict with any one of the contracting states. In the relations between the states of the American Continent there are similar difficulties which led the American Government at the Pan American Conference at Habana to approve a resolution limited to the very terms "war of aggression" which the French Government felt compelled to use in characterizing the renunciation to which it was requested to bind itself by means of a multilateral treaty. To be sure, the same reservation does not appear in another resolution to which your excellency referred in your note of February 27, but it must be observed that this resolution in itself constituted only a kind of preliminary tending toward a treaty of arbitration with regard to which numerous reservations were formulated.

Your excellency appears to have been surprised that France should not be able to conclude with all the powers in the form of a multilateral treaty the same treaty which she offered to conclude separately with the United States in the form of a bilateral treaty. My Government believes that it has explained this point with sufficient clearness in recalling the fact that the project of a treaty of perpetual friendship between France and the United States proposed last June was drafted in such a way as to limit strictly the mutual undertakings which it contained to those relations in law resulting from intercourse between the two signatory states alone. Within such limits an absolutely unconditional agreement might be entered into, since that agreement would not expose the signatories, as would a multilateral treaty, to juridical difficulties resulting from the respective positions of various powers with regard to one another,

and since furthermore, as regards two countries like France and the United States morally united as they are by ties of time-honored friendship, other contractual engagements concluded by one or the other power could never constitute in fact anything but purely theoretical obstacles.

In order to attain the result which your excellency has in view, you have considered it preferable to adhere to the conception of a multilateral treaty, and you have deemed it necessary to insist that even in the multilateral form the proposed treaty should include an unconditional pledge. If your excellency really believes that greater chances of success may be found in this formula in spite of the consequences which it involves, especially the necessity of attaining a treaty world-wide in its scope, the French Government would hesitate to discuss longer the question of its adherence to a plan which the American Government originated and for which it is responsible. Without in any way losing sight of its international obligations, both as a member of the League of Nations and as a party to the treaties of Locarno or treaties guaranteeing neutrality, France, for the purpose of finding a common basis for initial negotiations, is wholly disposed, after a new examination of the proposals formulated by your excellency, to suggest immediately to the German, British, Italian and Japanese Governments that they join in seeking, in the spirit and in the letter of the last American note, any adjustments which in the last analysis may be forthcoming with respect to the possibility of reconciling previous obligations with the terms of the contemplated new treaty.

The French Government notes at once with satisfaction that while advocating the conclusion among the Governments specifically mentioned of a treaty binding the signatories not to resort to war, the Government of the United States admits the participation in that treaty of all the other governments of the world. This con-

ception accords with a reservation actually necessary for obtaining a real instrument for the establishment of peace by means of a formal engagement among all powers among whom political controversies may arise. Such an engagement would in fact involve the risk of exposing the signatories to dangers and misunderstandings unless based upon the complete equality in the application of the treaty among themselves of all the states with respect to other states and not only upon the equality of certain states among them. The treaty contemplated could not operate in respect of one power which is a party thereto unless the other states exposed to the possibility of grave controversies with that party were also signatories thereof.

At the same time it is clear that in order not to turn an instrument of progress and peace into a means of oppression, if one of the signatory states should fail to keep its word, the other signatories should be released from their engagement with respect to the offending state. On this second point, as on the first, the French Government believes itself fully in accord with the Government of the United States.

My Government likewise gathers from the declarations which your excellency was good enough to make to me on the first of last March, the assurance that the renunciation of war, thus proclaimed, would not deprive the signatories of the right of legitimate defense. Such an interpretation tends to dissipate apprehensions, and the French Government is happy to note it.

If such is the attitude of the American Government on these three fundamental points, and if it is clearly understood in a general way that the obligations of the new pact should not be substituted for, or prejudice in any way, previous obligations contained in international instruments such as the Covenant of the League of Nations, the Locarno agreements or treaties guaranteeing neutrality whose character and scope can not be modified

thereby, then the differences of opinion which have appeared in the course of previous phases of the negotiation have to do more with words than with the reality of the problem facing the two Governments to-day.

Hence, in accordance with the proposal contained in your note of January 11, which you kindly renewed in your note of the 27th of February, the French Government would be prepared forthwith to join with the Government of the United States in submitting for the consideration of the Governments of Germany, Great Britain, Italy and Japan, the correspondence exchanged between France and the United States since June 1927, and in proposing at the same time for the assent of the four Governments, a draft agreement essentially corresponding in purpose to the original proposal of M. Briand, in the multipartite form desired by the United States with the changes of wording made necessary by the new concept; the signatory powers of such an instrument, while not prejudicing their rights of legitimate defense within the framework of existing treaties, should make a solemn declaration condemning recourse to war as an instrument of national policy, or in other words as a means of carrying out their own spontaneous, independent policy.

They would specifically undertake, among themselves, to refrain from any attack or invasion, and never to seek the settlement of any difference or conflict of whatsoever nature or origin which might arise between them save by pacific means. It would, however, be clearly understood that an obligation could only exist for the signatories in the event that the engagement were contracted by all states, that is to say, that the treaty, open to the accession of all powers, would only come into force after having received universal acceptance, unless the powers having signed this treaty or acceded thereto should agree upon its coming into force, despite certain abstentions. Finally, in case one of the contract-

ing powers should happen to contravene the treaty, the other contracting powers would be automatically relieved, with respect to that power, of the obligations contained in the treaty.

It is in this form, it would seem, that the negotiation of a plan for a multilateral pact such as conceived by the American Government could be pursued with the greatest chances of success. Your excellency may be assured, in any case, in the conduct of this negotiation of the most sincere and most complete collaboration of my Government which is always ready to associate itself without ambiguity or reservation, with any solemn and formal undertaking tending to insure, strengthen or extend the effective solidarity of the nations in the cause of peace.

In responding to these ideas, whose happy inspiration cannot be gainsaid, France would feel confident that she was continuing the work to which she has never ceased to apply herself in her foreign policy, and, faithful to her previous international engagements of that nature, that she was contributing nobly, as your excellency has said, in "promoting the great ideal of peace which the League itself has so closely at heart."

Pray accept [etc.]

CLAUDEL

*Note of the Government of the United States to the
Governments of Great Britain, Germany, Italy
and Japan, delivered at the respective
Foreign Offices April 13, 1928*

As your excellency is aware, there has recently been exchanged between the Governments of France and the United States a series of notes dealing with the question of a possible international renunciation of war. The views of the two Governments have been clearly set forth in the correspondence between them.

The Government of the United States, as stated in its note of February 27, 1928, desires to see the institution of war abolished and stands ready to conclude with the French, British, German, Italian and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments binding the parties thereto not to resort to war with one another.

The Government of the French Republic, while no less eager to promote the cause of world peace and to cooperate with other nations in any practical movement towards that end, has pointed out certain considerations which in its opinion must be borne in mind by those powers which are members of the League of Nations, parties to the treaties of Locarno, or parties to other treaties guaranteeing neutrality. My Government has not conceded that such considerations necessitate any modification of its proposal for a multilateral treaty, and is of the opinion that every nation in the world can, with a proper regard for its own interests, as well as for the interests of the entire family of nations, join in such a treaty. It believes, moreover, that the execution by France, Great Britain, Germany, Italy, Japan and the United States of a treaty solemnly renouncing war in favor of the pacific settlement of international controversies would have tremendous moral effect and ultimately lead to the adherence of all the other governments of the world.

The discussions which have taken place between France and the United States have thus reached a point where it seems essential, if ultimate success is to be attained, that the British, German, Italian and Japanese Governments should each have an opportunity formally to decide to what extent, if any, its existing commitments constitute a bar to its participation with the United States in an unqualified renunciation of war. In these circumstances the Government of the United States, having reached complete agreement with the Government

of the French Republic as to this procedure, has instructed me formally to transmit herewith for the consideration of your Government the text of M. Briand's original proposal of last June, together with copies of the notes subsequently exchanged between France and the United States on the subject of a multilateral treaty for the renunciation of war.

I have also been instructed by my Government to transmit herewith for consideration a preliminary draft of a treaty representing in a general way the form of treaty which the Government of the United States is prepared to sign with the French, British, German, Italian and Japanese Governments and any other Governments similarly disposed. It will be observed that the language of Articles 1 and 2 of this draft treaty is practically identical with that of the corresponding articles in the treaty which M. Briand proposed to the United States.

The Government of the United States would be pleased to be informed as promptly as may be convenient whether your excellency's Government is in a position to give favorable consideration to the conclusion of a treaty such as that transmitted herewith, and if not, what specific modifications in the text thereof would make it acceptable.

Suggested Draft Treaty

The President of the United States of America, the President of the French Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, the President of the German Empire, His Majesty the King of Italy, His Majesty the Emperor of Japan;

Deeply sensible that their high office imposes upon them a solemn duty to promote the welfare of mankind;

Inspired by a common desire not only to perpetuate the peaceful and friendly relations now happily subsisting between their peoples but also to prevent war among any of the nations of the world;

Desirous by formal act to bear unmistakable witness that they condemn war as an instrument of national policy and renounce it in favor of the pacific settlement of international disputes;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America: —————

The President of the French Republic: —————

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India: ———

— — — — —

The President of the German Empire: —————

His Majesty the King of Italy: —————

His Majesty the Emperor of Japan: —————

Who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

ARTICLE 1

The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3

The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at — — — — —.

This treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other powers of the world. Every instrument evidencing the adherence of a power shall be deposited at — — — — — and the treaty shall immediately upon such deposit become effective as between the power thus adhering and the other powers parties hereto.

It shall be the duty of the Government of — — — — — to furnish each Government named in the preamble and every Government subsequently adhering to this treaty with a certi-

fied copy of the treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of ——— telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective plenipotentiaries have signed this treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at ——— the ——— day of ——— in the year of our Lord one thousand nine hundred and twenty ———

*Draft of proposed treaty submitted by the Government
of France to the Governments of Great Britain,
Germany, Italy, Japan and the United States
on April 20, 1928*

[Translation]

The President of the German Empire, the President of the United States of America, the President of the French Republic, His Majesty the King of England, Ireland and the British Dominions, Emperor of India, His Majesty the King of Italy, His Majesty the Emperor of Japan:

Equally desirous not only of perpetuating the happy relations of peace and friendship now existing among their peoples, but also of avoiding the danger of war between all other nations of the world,

Having agreed to consecrate in a solemn act their most formal and most definite resolution to condemn war as an instrument of national policy and to renounce it in favor of a peaceful settlement of international conflicts,

Expressing, finally, the hope that all the other nations of the world will be willing to join in this humane effort to bring about the association of the civilized peoples in a common renunciation of war as an instrument of national policy, have decided to conclude a treaty and to that end have designated as their respective plenipotentiaries:

The President of the German Empire: — — — — —
The President of the United States of America: — —
The President of the French Republic: — — — — —
His Majesty the King of Great Britain, Ireland and
the British Dominions, Emperor of India: — — — — —
His Majesty the King of Italy: — — — — —
His Majesty the Emperor of Japan: — — — — —
Who, after exchanging their full powers found to be
in good and due form, have agreed on the following
provisions:

ARTICLE 1

The high contracting parties without any intention to infringe upon the exercise of their rights of legitimate self-defense within the framework of existing treaties, particularly when the violation of certain of the provisions of such treaties constitutes a hostile act, solemnly declare that they condemn recourse to war and renounce it as an instrument of national policy; that is to say, as an instrument of individual, spontaneous and independent political action taken on their own initiative and not action in respect of which they might become involved through the obligation of a treaty such as the Covenant of the League of Nations or any other treaty registered with the League of Nations. They undertake on these conditions not to attack or invade one another.

ARTICLE 2

The settlement or solution of all disputes or conflicts, of whatever nature or origin, which might arise among the high contracting parties or between any two of them, shall never be sought on either side except by pacific methods.

ARTICLE 3

In case one of the high contracting parties should contravene this treaty, the other contracting powers

would *ipso facto* be released with respect to that party from their obligations under this treaty.

ARTICLE 4

The provisions of this treaty in no wise affect the rights and obligations of the contracting parties resulting from prior international agreements to which they are parties.

ARTICLE 5

The present treaty will be offered for the accession of all powers and will have no binding force until it has been generally accepted unless the signatory powers in accord with those that may accede hereto shall agree to decide that it shall come into effect regardless of certain abstentions.

ARTICLE 6

The present treaty shall be ratified.

The ratifications shall be deposited at — — — — ; within three months from the date of the deposit of the ratifications it shall be communicated by the Government of — — — — to all the powers with an invitation to accede.

The Government of — — — — will transmit to each of the signatory powers and the powers that have acceded a duly certified copy of the instruments of accession as they are received.

One year after the expiration of the three months' period provided in Article 5, the Government of — — — — will send out a statement of the signatories and accessions to all the powers that have signed or acceded.

In witness whereof the above-named plenipotentiaries have signed this treaty and sealed it with their seal.

Done at — — — — in — — — — copies, drawn up in French and English and having equal force. — — — — , 1928.

*The German Minister of Foreign Affairs (Stresemann)
to the American Ambassador (Schurman)*

[Translation]

BERLIN, April 27, 1928

MR. AMBASSADOR: In the note of April 13 and its enclosures your excellency informed me of the negotiations between the Government of the United States of America and the Government of France regarding the conclusion of an international pact for the outlawry of war. At the same time you asked me the question whether the German Government was disposed to conclude such a pact in accordance with the draft put forward by the Government of the United States or whether it considered certain changes in this draft necessary.

The German Government has studied the question put by you with the care appropriate to the extraordinary importance of the matter. It was possible also in this study to take into consideration the draft treaty which had been drawn up in the meantime by the French Government and handed to the participating powers. As a result of this study I have the honor to inform your excellency of the following in the name of the German Government:

The German Government welcomes most warmly the opening of negotiations for the conclusion of an international pact for the outlawry of war. The two main ideas on which are based the initiative of the French Minister of Foreign Affairs and the resulting proposal of the United States correspond fully to the principles of German policy. Germany has no higher interest than to see the possibility of armed conflicts eliminated and a development assured in the life of the nations which would guarantee the peaceful settlement of all international disputes. The conclusion of a pact such as the United States now has in view would certainly bring the nations a good deal nearer to this goal.

As the need of the nations for the assurance of peace since the World War has already led to other international agreements, the necessity arises for the states concerned to make a decision as to the relationship in which the pact now being planned would stand to these international agreements which are already in effect. You have already, Mr. Ambassador, referred in your note to the considerations which were put forward in this connection by the French Government in its exchange of views with the Government of the United States. So far as Germany is concerned, the Covenant of the League of Nations and the Rhine pact of Locarno come into consideration as international agreements which might affect the substance of the new pact; other international obligations of this kind have not been entered into by Germany. Respect for the obligations arising from the Covenant of the League of Nations and the Rhine pact must in the opinion of the German Government remain inviolable. The German Government is, however, convinced that these obligations contain nothing which could in any way conflict with the obligations provided for in the draft treaty of the United States. On the contrary, it believes that the binding obligation not to use war as an instrument of national policy could only serve to strengthen the fundamental idea of the Covenant of the League of Nations and of the Rhine pact.

The German Government proceeds on the belief that a pact after the pattern submitted by the Government of the United States would not put in question the sovereign right of any state to defend itself. It is self-evident that if one state violates the pact the other contracting parties regain their freedom of action with reference to that state. The state affected by the violation of the pact is therefore not prevented from taking up arms on its own part against the breaker of the peace. In a pact of this kind to provide expressly for the case of a violation seems to the German Government unnecessary.

In agreement with the Government of the United States and with the French Government, the German Government is also of the opinion that the ultimate goal must be the universality of the new pact. In order to bring about this universality, the draft treaty of the United States seems to open a practical way. When the states first coming into question as signatory powers have concluded the pact it may be expected that the other states will thereupon make use of the right of adhesion which is assured to them without limitation or condition.

The German Government can accordingly declare that it is ready to conclude a pact in accordance with the proposal of the Government of the United States and to this end to enter into the necessary negotiations with the Governments concerned. To this declaration the German Government adds, moreover, its definite expectation that the realization of a pact of such importance will not fail to make its influence felt at once in connection with the shaping of international relations. Therefore, this new guarantee for the maintenance of peace must give a real impulse to the efforts for the carrying out of general disarmament. And further still, the renunciation of war must as a necessary complement enlarge the possibilities of settling in a peaceful way the existing and potential conflicts of national interests.

Accept [etc.]

STRESEMANN

*The Italian Minister of Foreign Affairs (Mussolini) to
the American Ambassador (Fletcher)*

[Translation]

ROME, May 4, 1928

MR. AMBASSADOR: I have the honor to refer to my note of April 23d relative to the proposal of the United States Government regarding a multilateral antiwar treaty.

I hardly need to assure you that Italy, adhering to the policy which she is constantly following, has welcomed with lively sympathy this initiative and offers very willingly her cordial collaboration towards reaching an agreement.

Your excellency is aware of the fact that there is under consideration the proposal for a preliminary meeting of the legal experts of the powers whose direct interest in the proposed treaty has been enlisted. The Royal Government has adhered to this procedure, but has clearly pointed out that, in its opinion, such a meeting can only be effective if the participation of a legal expert of the Government of the United States is assured.

In accordance with this order of ideas, I beg your excellency to communicate to Mr. Kellogg the live desire of the Royal Government that the participation of the United States in the preliminary meeting mentioned above be not lacking.

I avail [etc.]

MUSSOLINI

*The British Secretary of State for Foreign Affairs
(Chamberlain) to the American Ambassador
(Houghton)*

LONDON, May 19, 1928

YOUR EXCELLENCY: Your note of the 13th April, containing the text of a draft treaty for the renunciation of war, together with copies of correspondence between the United States and French Governments on the subject of this treaty, has been receiving sympathetic consideration at the hands of His Majesty's Government in Great Britain. A note has also been received from the French Government, containing certain suggestions for discussion in connexion with the proposed treaty, and the German Government were good enough to send me

a copy of the reply which has been made by them to the proposals of the United States Government.

2. The suggestion for the conclusion of a treaty for the renunciation of war as an instrument of national policy has evoked widespread interest in this country, and His Majesty's Government will support the movement to the utmost of their power.

3. After making a careful study of the text contained in your excellency's note and of the amended text suggested in the French note, His Majesty's Government feel convinced that there is no serious divergence between the effect of these two drafts. This impression is confirmed by a study of the text of the speech by the Secretary of State of the United States to which your excellency drew my attention, and which he delivered before the American Society of International Law on the 28th April. The aim of the United States Government, as I understand it, is to embody in a treaty a broad statement of principle, to proclaim without restriction or qualification that war shall not be used as an instrument of policy. With this aim His Majesty's Government are wholly in accord. The French proposals, equally imbued with the same purpose, have merely added an indication of certain exceptional circumstances in which the violation of that principle by one party may oblige the others to take action seeming at first sight to be inconsistent with the terms of the proposed pact. His Majesty's Government appreciate the scruples which have prompted these suggestions by the French Government. The exact fulfilment of treaty engagements is a matter which affects the national honour; precision as to the scope of such engagements is, therefore, of importance. Each of the suggestions made by the French Government has been carefully considered from this point of view.

4. After studying the wording of Article 1 of the United States draft, His Majesty's Government do not

think that its terms exclude action which a state may be forced to take in self-defence. Mr. Kellogg has made it clear in the speech to which I have referred above that he regards the right of self-defence as inalienable, and His Majesty's Government are disposed to think that on this question no addition to the text is necessary.

5. As regards the text of Article 2 no appreciable difference is found between the American and French proposals. His Majesty's Government are, therefore, content to accept the former if, as they understand to be the case, a dispute "among the high contracting parties" is a phrase wide enough to cover a dispute between any two of them.

6. The French note suggests the addition of an article providing that violation of the treaty by one of the parties should release the remainder from their obligations under the treaty towards that party. His Majesty's Government are not satisfied that, if the treaty stood alone, the addition of some such provision would not be necessary. Mr. Kellogg's speech, however, shows that he put forward for acceptance the text of the proposed treaty upon the understanding that violation of the undertaking by one party would free the remaining parties from the obligation to observe its terms in respect of the treaty-breaking state.

7. If it is agreed that this is the principle which will apply in the case of this particular treaty, His Majesty's Government are satisfied and will not ask for the insertion of any amendment. Means can no doubt be found without difficulty of placing this understanding on record in some appropriate manner so that it may have equal value with the terms of the treaty itself.

8. The point is one of importance because of its bearing on the treaty engagements by which His Majesty's Government are already bound. The preserva-

tion of peace has been the chief concern of His Majesty's Government and the prime object of all their endeavours. It is the reason why they have given ungrudging support to the League of Nations and why they have undertaken the burden of the guarantee embodied in the Locarno treaty. The sole object of all these engagements is the elimination of war as an instrument of national policy, just as it is the purpose of the peace pact now proposed. It is because the object of both is the same that there is no real antagonism between the treaty engagements which His Majesty's Government have already accepted and the pact which is now proposed. The machinery of the covenant and of the treaty of Locarno, however, go somewhat further than a renunciation of war as a policy, in that they provide certain sanctions for a breach of their obligations. A clash might thus conceivably arise between the existing treaties and the proposed pact unless it is understood that the obligations of the new engagement will cease to operate in respect of a party which breaks its pledges and adopts hostile measures against one of its co-contractants.

9. For the Government of this country respect for the obligations arising out of the Covenant of the League of Nations and out of the Locarno treaties is fundamental. Our position in this regard is identical with that of the German Government as indicated in their note of the 27th April. His Majesty's Government could not agree to any new treaty which would weaken or undermine these engagements on which the peace of Europe rests. Indeed, public interest in this country in the scrupulous fulfilment of these engagements is so great that His Majesty's Government would for their part prefer to see some such provision as Article 4 of the French draft embodied in the text of the treaty. To this we understand there will be no objection. Mr. Kellogg has made it clear in the speech

to which I have drawn attention that he had no intention by the terms of the new treaty of preventing the parties to the Covenant of the League or to the Locarno treaty from fulfilling their obligations.

10. The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

11. As regards the measure of participation in the new treaty before it would come into force, His Majesty's Government agree that it is not necessary to wait until all the nations of the world have signified their willingness to become parties. On the other hand, it would be embarrassing if certain states in Europe with whom the proposed participants are already in close treaty relations were not included among the parties. His Majesty's Government see no reason, however, to doubt that these states will gladly accept its terms. Universality would, in any case, be difficult of attainment, and might even be inconvenient, for there are some states whose governments have not yet been universally

recognized, and some which are scarcely in a position to ensure the maintenance of good order and security within their territories. The conditions for the inclusion of such states among the parties to the new treaty is a question to which further attention may perhaps be devoted with advantage. It is, however, a minor question as compared with the attainment of the more important purpose in view.

12. After this examination of the terms of the proposed treaty and of the points to which it gives rise, your excellency will realise that His Majesty's Government find nothing in their existing commitments which prevents their hearty cooperation in this movement for strengthening the foundations of peace. They will gladly cooperate in the conclusion of such a pact as is proposed and are ready to engage with the interested Governments in the negotiations which are necessary for the purpose.

13. Your excellency will observe that the detailed arguments in the foregoing paragraphs are expressed on behalf of His Majesty's Government in Great Britain. It will, however, be appreciated that the proposed treaty, from its very nature, is not one which concerns His Majesty's Government in Great Britain alone, but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India. They have, therefore, been in communication with those Governments, and I am happy to be able to inform your excellency that as a result of the communications which have passed it has been ascertained that they are all in cordial agreement with the general principle of the proposed treaty. I feel confident, therefore, that on receipt of an invitation to participate in the conclusion of such a treaty, they, no less than His Majesty's Government in Great Britain, will be prepared to accept the invitation.

I have [etc.]

AUSTEN CHAMBERLAIN

*The Minister in Canada (Phillips) to the Secretary of State for External Affairs (Mackenzie King)*¹

OTTAWA, May 22, 1928

SIR: In the note which he addressed to the American Ambassador at London on May 19, 1928, Sir Austen Chamberlain was good enough to inform my Government that His Majesty's Government in Great Britain had been in communication with his Majesty's Governments in the Dominions and with the Government of India, and had ascertained that they were all in cordial agreement with the general principle of the multilateral treaty for the renunciation of war which the Government of the United States proposed on April 13, 1928. Sir Austen added that he felt confident, therefore, that His Majesty's Governments in the Dominions and the Government of India were prepared to accept an invitation to participate in the conclusion of such a treaty as that proposed by the Government of the United States.

I have been instructed to state to your excellency that my Government has received this information with the keenest satisfaction. My Government has hoped from the outset of the present negotiations that the Governments of the Dominions and the Government of India would feel disposed to become parties to the suggested antiwar treaty. It is, moreover, most gratifying to the Government of the United States to learn that His Majesty's Governments in the Dominions and the Government of India are so favorably inclined towards the treaty for the renunciation of war which my Government proposed on April 13, 1928, as to wish to participate therein individually and as original signatories, and my Government, for its part, is most happy to accede to the suggestion contained in Sir Austen Chamberlain's

¹ A similar note was addressed by the Minister in the Irish Free State to the Minister for External Affairs, and by the Ambassador in Great Britain to the Secretary of State for Foreign Affairs, for transmission to Australia, New Zealand, South Africa and India.

note of May 19, 1928, to the American Ambassador at London.

Accordingly I have been instructed to extend to His Majesty's Government in Canada, in the name of the Government of the United States, a cordial invitation to become one of the original parties to the treaty for the renunciation of war which is now under consideration. Pursuant to my instructions I also have the honor to inform you that the Government of the United States will address to His Majesty's Government in Canada, at the same time and in the same manner as to the other governments whose participation in the proposed treaty in the first instance is contemplated, any further communications which it may make on the subject of the treaty after it has been acquainted with the views of all the governments to which its note of April 13, 1928, was addressed.

I avail [etc.]

WILLIAM PHILLIPS

*The Japanese Minister for Foreign Affairs (Tanaka)
to the American Ambassador (MacVeagh)*

[Translation]

Tokyo, May 26, 1928

MR. AMBASSADOR: I have the honor to acknowledge the receipt of your excellency's note No. 336 of April 13 last, transmitting to me, under instructions from the Government of the United States, the preliminary draft of a proposed multilateral treaty representing in a general way a form of treaty which the Government of the United States is prepared to sign with the French, British, German, Italian and Japanese Governments and any other governments similarly disposed, with the object of securing the renunciation of war. At the same

time your excellency enclosed a copy of the correspondence recently exchanged between the Governments of the United States and the French Republic commencing with a proposal put forward by Monsieur Briand in June 1927; and you intimated that the Government of the United States desired to be informed whether the Japanese Government were in a position to give favorable consideration to the conclusion of such a treaty as that of which you enclosed a draft—and if not, what specific modifications in the text would make it acceptable.

I beg to inform your excellency that the Government of Japan sympathize warmly with the high and beneficent aims of the proposal now made by the United States, which they take to imply the entire abolition of the institution of war, and that they will be glad to render their most cordial cooperation towards the attainment of that end.

The proposal of the United States is understood to contain nothing that would refuse to independent states the right of self-defense, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the Covenant of the League of Nations and the treaties of Locarno. Accordingly, the Imperial Government firmly believe that unanimous agreement on a mutually acceptable text for such a treaty as is contemplated is well capable of realization by discussion between the six powers referred to, and they would be happy to collaborate with cordial good will in the discussions with the purpose of securing what they are persuaded is the common desire of all the peoples of the world—namely, the cessation of wars and the definite establishment among the nations of an era of permanent and universal peace.

I avail [etc.]

BARON GIICHI TANAKA

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Government of
New Zealand, to the American Chargé
(Atherton)*

LONDON, May 30, 1928

SIR: In the note which Mr. Houghton was so good as to address to me on May 22d he extended on behalf of the Government of the United States an invitation to His Majesty's Governments in the Commonwealth of Australia, New Zealand and in the Union of South Africa, as well as to the Government of India, to participate individually and as original signatories in the treaty for the renunciation of war which is now under consideration.

2. I now have the honor to inform you that His Majesty's Government in New Zealand have received with warm appreciation the invitation addressed to New Zealand to become an original party to the treaty proposed by the Government of the United States for the renunciation of war. His Majesty's Government in New Zealand welcome the opportunity, in cooperation with His Majesty's Governments in other parts of the British Empire, of associating themselves with the Government of the United States in this movement to add greater security to the peace of the world and they will be happy to share in any negotiations leading to the conclusion of the proposed treaty.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

*The Irish Free State Minister for External Affairs
(McGilligan) to the American Minister (Sterling)*

DUBLIN, May 30, 1928

EXCELLENCY: I have the honor to acknowledge receipt of your excellency's note of 22d May referring to the draft treaty for the renunciation of war and ex-

tending an invitation from your Government to the Government of the Irish Free State to become one of the original parties to the proposed treaty.

The Government of the Irish Free State warmly welcome the action of the United States Government in initiating this further advance towards the maintenance of general peace. They are in cordial agreement with the general principle of the draft treaty which they confidently hope will ensure the peaceful settlement of future international disputes.

Sharing the view expressed by the Secretary of State of the United States in his speech before the American Society of International Law that nothing in the draft treaty is inconsistent with the Covenant of the League of Nations, the Government of the Irish Free State accept unreservedly the invitation of the United States Government to become a party to the treaty jointly with the other states similarly invited.

The Government of the Irish Free State will be glad therefore to participate in, and to further by every possible means, the negotiations which may be necessary for the conclusion of the pact.

Accept [etc.]

P. MCGILLIGAN

*The Canadian Secretary of State for External Affairs
(Mackenzie King) to the American Minister
(Phillips)*

OTTAWA, May 30, 1928

SIR: I have the honour to acknowledge your note of May 22d, extending to His Majesty's Government in Canada, in the name of the Government of the United States, an invitation to become one of the original parties to the treaty for the renunciation of war now under consideration.

The Government of Canada is certain that it speaks for the whole Canadian people in welcoming the outcome,

in the proposed multilateral pact, of the discussion initiated almost a year ago between the Governments of France and of the United States. It is pleased to find that in this attitude it is in accord with all His Majesty's other governments. The proposals of the United States Government, by their directness and simplicity, afford to the peoples of the world a new and notable opportunity of ensuring lasting peace.

The Dominion of Canada, fortunate in its ties of kinship and allegiance as well as in its historic and neighbourly friendships, and with half a continent as its heritage, is less exposed to the danger of attack or the temptation to aggression than many other lands. Yet the Great War, with its burdens of suffering and of loss, brought home the danger which all countries share, and led Canada to turn with hope to the efforts to build up effective barriers against war which took shape in the League of Nations; it will welcome the present proposals as a manifestation of the same striving for peace.

The question whether the obligations of the Covenant of the League would conflict in any way with the obligations of the proposed pact has been given careful consideration. His Majesty's Government in Canada regards the League, with all its limitations, as an indispensable and continuing agency of international understanding, and would not desire to enter upon any course which would prejudice its effectiveness. It is, however, convinced that there is no conflict either in the letter or in the spirit between the Covenant and the multilateral pact, or between the obligations assumed under each.

The pre-eminent value of the League lies in its positive and preventive action. In bringing together periodically the representatives of fifty states, it builds up barriers against war by developing a spirit of conciliation, an acceptance of publicity in international affairs, a habit of cooperation in common ends, and a permanently available machinery for the adjustment of differences. It is true that the Covenant also contemplates the application

of sanctions in the event of a member state going to war, if in so doing it has broken the pledges of the Covenant to seek a peaceful solution of disputes. Canada has always opposed any interpretation of the Covenant which would involve the application of these sanctions automatically or by the decision of other states. It was on the initiative of Canada that the Fourth Assembly, with a single negative vote, accepted the interpretative resolution to which the Secretary of State of the United States recently referred, indicating that it is for the constitutional authorities of each state to determine in what degree it is bound to assure the execution of the obligations of this article by employment of its military forces. The question of sanctions has received further consideration by later Assemblies. It is plain that the full realization of the ideal of joint economic or military pressure upon an outlaw power, upon which some of the founders of the League set great store, will require either an approach to the universality of the League contemplated when the Covenant was being drawn, or an adjustment of the old rules of neutrality to meet the new conditions of cooperative defence.

In any event, if, as would seem to be the case, the proposed multilateral treaty does not impose any obligation upon a signatory in relation to a state which has not signed the treaty or has broken it, any decision taken to apply sanctions against a member of the League which has made war in violation of its Covenant pledges would not appear to conflict with the obligations of the treaty.

His Majesty's Government in Canada will have pleasure in cooperating in any future negotiations with a view to becoming a signatory to a treaty such as is proposed by the Government of the United States in the invitation which it has extended, and to recommending its acceptance to the Canadian Parliament.

Accept [etc.]

W. L. MACKENZIE KING

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Commonwealth
of Australia, to the American Chargé
(Atherton)*

LONDON, June 2, 1928

SIR: In the note which Mr. Houghton was so good as to address to me on May 22d last, he extended on behalf of the Government of the United States an invitation to His Majesty's Government in the Commonwealth of Australia to participate individually and as an original signatory in the treaty for the renunciation of war which is now under consideration.

2. I now have the honour to inform you that His Majesty's Government in the Commonwealth of Australia have received with appreciation the invitation to participate as an original party in the treaty for the renunciation of war which has been proposed by the Government of the United States of America. His Majesty's Government in the Commonwealth of Australia have carefully and sympathetically examined the draft treaty submitted to them together with the correspondence that has so far been exchanged between the interested governments. They believe that a treaty such as that proposed would be a further material safeguard to the peace of the world and they will be happy to cooperate to the fullest extent in its successful conclusion.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Government
of India, to the American Chargé
(Atherton)*

LONDON, June 11, 1928

SIR: In the note which Mr. Houghton was so good as to address to me on the 22d ultimo, he extended on behalf of the Government of the United States, an invitation to the Government of India to participate individually and as an original signatory in the treaty for the renunciation of war which is now under consideration.

2. I now have the honour to inform you that the Government of India have requested that an expression of their warm thanks may be conveyed to the United States Government for this invitation which they are happy to accept. I have the honour to add that the Government of India desire to associate themselves with the note which I had the honour to address to Mr. Houghton on the 19th ultimo.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Union of
South Africa, to the American Chargé
(Atherton)*

LONDON, June 15, 1928

SIR: With reference to the note which Mr. Houghton was so good as to address to me on the 22d May conveying an invitation to His Majesty's Government in the Union of South Africa to become an original

party to the proposed treaty for the renunciation of war, I have the honour to inform you that the following message has been received by telegraph from General Hertzog, Minister of External Affairs of the Union of South Africa, for communication to you:

Through the good offices of His Majesty's Government in the United Kingdom the contents of the note addressed by your excellency to his excellency the British Secretary of State for Foreign Affairs on the 22d May were duly conveyed to me. On behalf of His Majesty's Government in the Union of South Africa I beg to state that the cordial invitation of the Government of the United States extended to His Majesty's Government in the Union of South Africa to participate individually and as an original signatory in the treaty for the renunciation of war which the United States Government proposed to various governments on the 13th April last, is highly appreciated, and that His Majesty's Government in the Union of South Africa will gladly take part therein, as invited, together with the other governments whose participation in the proposed treaty was invited in the first instance.

In expressing their willingness to be a party to the proposed treaty His Majesty's Government in the Union of South Africa take it for granted—

- (a) That it is not intended to deprive any party to the proposed treaty of any of its natural right of legitimate self-defence;
- (b) That a violation of any one of the parties of any of the provisions of the proposed treaty will free the other parties from obligation to observe its terms in respect of the party committing such violation; and
- (c) That provision will be made for rendering it quite clear that it is not intended that the Union of South Africa, by becoming a party to the proposed treaty would be precluded from fulfilling as a member of the League of Nations its obligations towards the other members thereof under the provisions of the Covenant of the League.

I have [etc.]

(For the Secretary of State)

R. L. CRAIGIE

Note of the Government of the United States to the Governments of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, Irish Free State, Italy, Japan, New Zealand, Poland and South Africa, June 23, 1928

It will be recalled that, pursuant to the understanding reached between the Government of France and the Government of the United States, the American Ambassadors at London, Berlin, Rome and Tokyo transmitted on April 13, 1928, to the Governments to which they were respectively accredited the text of M. Briand's original proposal of June 20, 1927, together with copies of the notes subsequently exchanged by France and the United States on the subject of a multilateral treaty for the renunciation of war. At the same time the Government of the United States also submitted for consideration a preliminary draft of a treaty representing in a general way the form of treaty which it was prepared to sign, and inquired whether the Governments thus addressed were in a position to give favorable consideration thereto. The text of the identic notes of April 13, 1928, and a copy of the draft treaty transmitted therewith, were also brought to the attention of the Government of France by the American Ambassador at Paris.

It will likewise be recalled that on April 20, 1928, the Government of the French Republic circulated among the other interested governments, including the Government of the United States, an alternative draft treaty, and that in an address which he delivered on April 28, 1928, before the American Society of International Law, the Secretary of State of the United States explained fully the construction placed by my Government upon the treaty proposed by it, referring as follows to the six

major considerations emphasized by France in its alternative draft treaty and prior diplomatic correspondence with my Government:

(1) *Self-defense.* There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self-defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self-defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.

(2) *The League Covenant.* The Covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is secondary and attaches only when deliberately accepted by a state. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote to mean that "it is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces." There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances but it is an authorization and not a positive requirement.

(3) *The treaties of Locarno.* If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that if all the parties to the Locarno treaties become parties to the multilateral treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such event it would follow that resort to war by any state in violation of the Locarno treaties would also be a breach of the multilateral antiwar treaty and the other parties to the antiwar treaty would thus as a matter of law be automatically released from their obligations thereunder and free to fulfil their Locarno commitments. The United States is entirely willing

that all parties to the Locarno treaties should become parties to its proposed antiwar treaty either through signature in the first instance or by immediate accession to the treaty as soon as it comes into force in the manner provided in Article 3 of the American draft, and it will offer no objection when and if such a suggestion is made.

(4) *Treaties of neutrality.* The United States is not informed as to the precise treaties which France has in mind and cannot therefore discuss their provisions. It is not unreasonable to suppose, however, that the relations between France and the states whose neutrality she has guaranteed are sufficiently close and intimate to make it possible for France to persuade such states to adhere seasonably to the antiwar treaty proposed by the United States. If this were done no party to the antiwar treaty could attack the neutralized states without violating the treaty and thereby automatically freeing France and other powers in respect of the treaty-breaking state from the obligations of the antiwar treaty. If the neutralized states were attacked by a state not a party to the antiwar treaty, the latter treaty would of course have no bearing and France would be as free to act under treaties guaranteeing neutrality as if she were not a party to the antiwar treaty. It is difficult to perceive, therefore, how treaties guaranteeing neutrality can be regarded as necessarily preventing the conclusion by France or any other power of a multilateral treaty for the renunciation of war.

(5) *Relations with a treaty-breaking state.* As I have already pointed out, there can be no question as a matter of law that violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state. Any express recognition of this principle of law is wholly unnecessary.

(6) *Universality.* From the beginning it has been the hope of the United States that its proposed multilateral antiwar treaty should be world-wide in its application, and appropriate provision therefor was made in the draft submitted to the other governments on April 13. From a practical standpoint it is clearly preferable, however, not to postpone the coming into force of an antiwar treaty until all the nations of the world can agree upon the text of such a treaty and cause it to be ratified. For one reason or another a state so situated as to be no menace to the peace of the world might obstruct agreement or delay ratification in such manner as to render abortive the efforts of all the other powers. It is highly improbable, moreover, that a form of treaty acceptable to the British, French, German, Italian and Japanese Governments, as well as to the United States, would not be equally acceptable to most, if not all, of the other powers of the world. Even were this not the case, however, the coming into force among the above-named six powers of an effective antiwar treaty and their observance thereof would be a practical guaranty against a second

world war. This in itself would be a tremendous service to humanity and the United States is not willing to jeopardize the practical success of the proposal which it has made by conditioning the coming into force of the treaty upon prior universal or almost universal acceptance.

The British, German, Italian and Japanese Governments have now replied to my Government's note of April 13, 1928, and the Governments of the British Dominions and of India have likewise replied to the invitations addressed to them on May 22, 1928, by my Government pursuant to the suggestion conveyed in the note of May 19, 1928, from His Majesty's Government in Great Britain. None of these Governments has expressed any dissent from the above-quoted construction, and none has voiced the least disapproval of the principle underlying the proposal of the United States for the promotion of world peace. Neither has any of the replies received by the Government of the United States suggested any specific modification of the text of the draft treaty proposed by it on April 13, 1928, and my Government, for its part, remains convinced that no modification of the text of its proposal for a multilateral treaty for the renunciation of war is necessary to safeguard the legitimate interests of any nation. It believes that the right of self-defense is inherent in every sovereign state and implicit in every treaty. No specific reference to that inalienable attribute of sovereignty is therefore necessary or desirable. It is no less evident that resort to war in violation of the proposed treaty by one of the parties thereto would release the other parties from their obligations under the treaty towards the belligerent state. This principle is well recognized. So far as the Locarno treaties are concerned, my Government has felt from the very first that participation in the antiwar treaty by the powers which signed the Locarno agreements, either through signature in the first instance or thereafter, would meet every practical requirement of the situation, since in such event no state could resort

to war in violation of the Locarno treaties without simultaneously violating the antiwar treaty, thus leaving the other parties thereto free, so far as the treaty-breaking state is concerned. As your excellency knows, the Government of the United States has welcomed the idea that all parties to the treaties of Locarno should be among the original signatories of the proposed treaty for the renunciation of war and provision therefor has been made in the draft treaty which I have the honor to transmit herewith. The same procedure would cover the treaties guaranteeing neutrality to which the Government of France has referred. Adherence to the proposed treaty by all parties to these other treaties would completely safeguard their rights since subsequent resort to war by any of them or by any party to the antiwar treaty would violate the latter treaty as well as the neutrality treaty, and thus leave the other parties to the antiwar treaty free, so far as the treaty-breaking state is concerned. My Government would be entirely willing, however, to agree that the parties to such neutrality treaties should be original signatories of the multilateral antiwar treaty, and it has no reason to believe that such an arrangement would meet with any objection on the part of the other Governments now concerned in the present negotiations.

While my Government is satisfied that the draft treaty proposed by it on April 13, 1928, could be properly accepted by the powers of the world without change except for including among the original signatories the British Dominions, India, all parties to the treaties of Locarno and, it may be, all parties to the neutrality treaties mentioned by the Government of France, it has no desire to delay or complicate the present negotiations by rigidly adhering to the precise phraseology of that draft, particularly since it appears that by modifying the draft in form though not in substance, the points raised by other Governments can be satisfactorily met and

general agreement upon the text of the treaty to be signed be promptly reached. The Government of the United States has therefore decided to submit to the fourteen other Governments now concerned in these negotiations a revised draft of a multilateral treaty for the renunciation of war. The text of this revised draft is identical with that of the draft proposed by the United States on April 13, 1928, except that the preamble now provides that the British Dominions, India and all parties to the treaties of Locarno are to be included among the powers called upon to sign the treaty in the first instance, and except that the first three paragraphs of the preamble have been changed to read as follows:

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

The revised preamble thus gives express recognition to the principle that if a state resorts to war in violation of the treaty, the other contracting parties are released from their obligations under the treaty to that state; it also provides for participation in the treaty by all parties to the treaties of Locarno, thus making it certain that resort to war in violation of the Locarno treaties would also violate the present treaty and release not only the other signatories of the Locarno treaties but also the other signatories to the antiwar treaty from their obligations to the treaty-breaking state. Moreover, as stated above, my Government would be willing to have included among the original signatories the parties to the neutrality treaties referred to by the Government of the French Republic, although it believes that the interests of

those states would be adequately safeguarded if, instead of signing in the first instance, they should choose to adhere to the treaty.

In these circumstances I have the honor to transmit herewith for the consideration of your excellency's Government a draft of a multilateral treaty for the renunciation of war containing the changes outlined above. I have been instructed to state in this connection that the Government of the United States is ready to sign at once a treaty in the form herein proposed, and to express the fervent hope that the Government of — — — will be able promptly to indicate its readiness to accept, without qualification or reservation, the form of treaty now suggested by the United States. If the Governments of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, the Irish Free State, Italy, Japan, New Zealand, Poland, South Africa and the United States can now agree to conclude this antiwar treaty among themselves, my Government is confident that the other nations of the world will, as soon as the treaty comes into force, gladly adhere thereto, and that this simple procedure will bring mankind's age-long aspirations for universal peace nearer to practical fulfilment than ever before in the history of the world.

I have the honor to state in conclusion that the Government of the United States would be pleased to be informed at as early a date as may be convenient whether your excellency's Government is willing to join with the United States and other similarly disposed Governments in signing a definite treaty for the renunciation of war in the form transmitted herewith.

[Enclosure]

Text of Draft Treaty

The President of the United States of America, the President of the French Republic, His Majesty the King of the Belgians, the President of the Czechoslovak Republic, His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India, the President of

the Germany Reich, His Majesty the King of Italy, His Majesty the Emperor of Japan, the President of the Republic of Poland;

Deeply sensible of their solemn duty to promote the welfare of mankind;

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated;

Convinced that all changes in their relations with one another should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

Hopeful that, encouraged by their example, all the other nations of the world will join in this humane endeavor and by adhering to the present treaty as soon as it comes into force bring their peoples within the scope of its beneficent provisions, thus uniting the civilized nations of the world in a common renunciation of war as an instrument of their national policy;

Have decided to conclude a treaty and for that purpose have appointed as their respective plenipotentiaries:

The President of the United States of America: — — — —

The President of the French Republic: — — — — —

His Majesty the King of the Belgians: — — — — —

The President of the Czechoslovak Republic: — — — — —

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League of Nations: — — — — —

For the Dominion of Canada: — — — — —

For the Commonwealth of Australia: — — — — —

For the Dominion of New Zealand: — — — — —

For the Union of South Africa: — — — — —

For the Irish Free State: — — — — —

For India: — — — — —

The President of the German Reich: — — — — —

His Majesty the King of Italy: — — — — —

His Majesty the Emperor of Japan: — — — — —

The President of the Republic of Poland: — — — — —

Who, having communicated to one another their full powers found in good and due form have agreed upon the following articles:

ARTICLE I

The high contracting parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2

The high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

ARTICLE 3

The present treaty shall be ratified by the high contracting parties named in the preamble in accordance with their respective constitutional requirements, and shall take effect as between them as soon as all their several instruments of ratification shall have been deposited at — — — — —.

This treaty shall, when it has come into effect as prescribed in the preceding paragraph, remain open as long as may be necessary for adherence by all the other powers of the world. Every instrument evidencing the adherence of a power shall be deposited at — — — — — and the treaty shall immediately upon such deposit become effective as between the power thus adhering and the other powers parties hereto.

It shall be the duty of the Government of — — — to furnish each Government named in the preamble and every Government subsequently adhering to this treaty with a certified copy of the treaty and of every instrument of ratification or adherence. It shall also be the duty of the Government of — — — — telegraphically to notify such Governments immediately upon the deposit with it of each instrument of ratification or adherence.

In faith whereof the respective plenipotentiaries have signed this treaty in the French and English languages, both texts having equal force, and hereunto affix their seals.

Done at — — — — the — — — — day of — — — in the year of our Lord one thousand nine hundred and twenty — —.

*The Polish Vice Minister for Foreign Affairs (Wysocki)
to the American Minister (Stetson)*

[Translation]

WARSAW, July 8, 1928^{*}

MR. MINISTER: I have the honor to acknowledge the receipt of the note No. 1175 of June 23 last which you were good enough to send me, to which was attached the draft of a multilateral pact against war, as proposed by his excellency Mr. Kellogg.

^{*} Although dated July 8, 1928, the note was not presented to the American Minister until July 17.

The principles which Mr. Kellogg has emphasized in the draft above mentioned being entirely conformable with the objectives that Poland never ceases pursuing in its foreign policy, I have the honor to communicate to you the fact that the Polish Government accepts the text of the above-stated pact and declares itself ready to affix its signature thereto.

As regards the interpretation of the pact in question which you have been good enough to give in your note of June 23 and which confirms the fact that the pact is destined to insure the consolidation of peaceful relations between states on the basis of the existing international obligations, the Polish Government takes note of the following statements:

- (1) That the pact does not affect in any way the right of legitimate defense inherent in each state;
- (2) That each state signatory to the pact which may endeavor to realize its national interests by means of war shall be deprived of the benefits of the said pact;
- (3) That no incompatibility exists between the stipulations of the pact against war and the obligations deriving from the Covenant of the League of Nations for states which are members of the latter. This statement results from the very fact that the pact proposed by Mr. Kellogg stipulates the renunciation of war as an instrument of national policy.

These precisions as well as the opportunity given to all states to adhere to the pact, are of a nature to assure to Poland the possibility of satisfying her international obligations.

The Polish Government permits itself to express the hope of seeing the realization in the near future of this

great common work of peace and stabilization destined to assure its benefits to all mankind.

Please accept [etc.]

ANDREW WYSOCKI

The German State Secretary (Schubert) to the American Ambassador (Schurman)

[Translation]

BERLIN, July 11, 1928

EXCELLENCY: I acknowledge the receipt of your excellency's note of June 23, 1928, regarding the conclusion of an international pact for the renunciation of war, and have the honor to reply thereto as follows on behalf of the German Government:

The German Government has examined with the greatest care the contents of the note and the revised draft of the pact which was enclosed. The Government is pleased to state that the standpoint of the Government of the United States of America as set forth in the note corresponds with the fundamental German conception as it was communicated in the note of April 27, 1928. The German Government also agrees to the changes in the preamble of the draft of the pact. It is therefore pleased to be able to state that it takes cognizance of the statements made by the Government of the United States of America contained in your excellency's note of June 23, that it agrees to the interpretation which is given therein to the provisions of the proposed pact, and that it is accordingly ready to sign this pact in the form now proposed.

Accept [etc.]

SCHUBERT

*The French Minister of Foreign Affairs (Briand) to the
American Ambassador (Herrick)*

[Translation]

PARIS, July 14, 1928

EXCELLENCY: By your letter of June 23 last your excellency was good enough to transmit to me a revised text of the draft treaty for the renunciation of war, accompanied by the interpretations given to it by the Government of the United States.

I beg you to convey to the Government of the United States all the interest with which the Government of the Republic has taken cognizance of this new communication, which is suited to facilitate the signature of the treaty whose successful conclusion is equally close to the hearts of the French and American nations.

First of all it follows from the new preamble that the proposed treaty indeed aims at the perpetuation of the pacific and friendly relations under the contractual conditions in which they are to-day established between the interested nations; that it is essentially a question for the signatory powers of renouncing war "as an instrument of their national policy," and also that the signatory power which hereafter might seek to promote its own national interests by itself resorting to war, should be denied the benefits of the treaty.

The Government of the Republic is happy to declare that it is in accord with these new stipulations.

The Government of the Republic is happy, moreover, to take note of the interpretations which the Government of the United States gives to the new treaty with a view to satisfying the various observations which had been formulated from the French point of view.

These interpretations may be summarized as follows:

Nothing in the new treaty restrains or compromises in any manner whatsoever the right of self-defense. Each nation in this respect will always remain free to

defend its territory against attack or invasion; it alone is competent to decide whether circumstances require recourse to war in self-defense.

Secondly, none of the provisions of the new treaty is in opposition to the provisions of the Covenant of the League of Nations nor with those of the Locarno treaties or the treaties of neutrality.

Moreover, any violation of the new treaty by one of the contracting parties would automatically release the other contracting parties from their obligations to the treaty-breaking state.

Finally, the signature which the Government of the United States has now offered to all the signatory powers of the treaties concluded at Locarno and which it is disposed to offer to all powers parties to treaties of neutrality, as well as the adherence made possible to other powers, is of a nature to give the new treaty, in as full measure as can practically be desired, the character of generality which accords with the views of the Government of the Republic.

Thanks to the clarification given by the new preamble and thanks, moreover, to the interpretations given to the treaty, the Government of the Republic congratulates itself that the new convention is compatible with the obligations of existing treaties to which France is otherwise a contracting party, and the integral respect of which of necessity is imperatively imposed upon her by good faith and loyalty.

In this situation and under these conditions, the Government of the Republic is happy to be able to declare to the Government of the United States that it is now entirely disposed to sign the treaty as proposed by the letter of your excellency of June 23, 1928.

At the moment of thus assuring its contribution to the realization of a long-matured project, all the moral significance of which it had gauged from the beginning, the Government of the Republic desires to render

homage to the generous spirit in which the Government of the United States has conceived this new manifestation of human fraternity, which eminently conforms to the profound aspirations of the French people as well as of the American people and responds to the sentiment, more and more widely shared among peoples of international solidarity.

Please accept [etc.]

ARISTIDE BRIAND

*The Irish Free State Minister for External Affairs
(McGilligan) to the American Minister (Sterling)*^a

DUBLIN, July 14, 1928

EXCELLENCY: Your excellency's note of the 23d June enclosing a revised draft of proposed treaty for the renunciation of war has been carefully studied by the Government of the Irish Free State.

As I informed you in my note of the 30th May, the Government of the Irish Free State were prepared to accept unreservedly the draft treaty proposed by your Government on the 13th April, holding, as they did, that neither their right of self-defense nor their commitments under the Covenant of the League of Nations were in any way prejudiced by its terms.

The draft treaty as revised is equally acceptable to the Government of the Irish Free State, and I have the honour to inform you that they are prepared to sign it in conjunction with such other governments as may be so disposed. As the effectiveness of the proposed treaty as an instrument for the suppression of war depends to a great extent upon its universal application, the Government of the Irish Free State hope that the treaty may meet with the approbation of the other governments

^a Text as transmitted by telegram from the Minister in the Irish Free State.

to whom it has been sent and that it may subsequently be accepted by all the other powers of the world.

Accept [etc.]

P. MCGILLIGAN

*The Italian Minister of Foreign Affairs (Mussolini) to
the American Ambassador (Fletcher)*

[Translation]

ROME, July 15, 1928

EXCELLENCY: I have the honor to refer to the letter which, under instructions of your Government, your excellency addressed to me under date of the 23d of June last and to ask your excellency to inform your Government as follows:

The Royal Government, which has attentively examined the last draft of a treaty for the elimination of war proposed by the United States, takes note of and agrees with the interpretation of the said treaty which the Government of the United States sets forth in the above-mentioned note of June 23 last and on this premise declares that it is disposed to proceed to the signature thereof.

I am happy [etc.]

MUSSOLINI

*The Canadian Secretary of State for External Affairs
(Mackenzie King) to the American Minister (Phillips)*

OTTAWA, July 16, 1928

SIR: I desire to acknowledge your note of June 23 and the revised draft which it contained of the treaty for the renunciation of war, and to state that His Majesty's Government in Canada cordially accepts the treaty as revised and is prepared to participate in its signature.

Accept [etc.]

W. L. MACKENZIE KING

*The Belgian Minister of Foreign Affairs (Hymans) to
the American Ambassador (Gibson)*

[Translation]

BRUSSELS, July 17, 1928

MR. AMBASSADOR: The Government of the King has examined with lively sympathy the letter of June 23 in which, acting under instructions from your Government, you have been good enough to invite Belgium to conclude a multilateral treaty providing that the signatory states bind themselves to renounce war as an instrument of national policy.

Belgium is deeply attached to peace. She has always worked actively for the realization of movements tending to consolidate peace. She is therefore happy to pay her tribute to the idea inspiring the draft treaty.

The text prepared by the Government of Washington commands the full approbation of the Royal Government. This Government notes with satisfaction the explanations and interpretations contained in your excellency's letter. It is pleased to note that the proposed pact will maintain unimpaired the rights and obligations arising from the Covenant of the League of Nations and from the Locarno agreements which constitute for Belgium fundamental guarantees of security.

The Belgian Government highly appreciates the action of the American Government which permits it to join in the great work destined to develop the spirit of peace throughout the world and to diminish in future the risk of new catastrophes.

The Royal Government would be grateful if the Government of the United States would inform it as to the date and place which it may choose for the signing of the treaty.

I avail [etc.]

HYMANS

*The British Secretary of State for Foreign Affairs
(Chamberlain) to the American Chargé (Atherton)*

LONDON, July 18, 1928

SIR: I am happy to be able to inform you that after carefully studying the note which you left with me on the 23d June, transmitting the revised text of the draft of the proposed treaty for the renunciation of war, His Majesty's Government in Great Britain accept the proposed treaty in the form transmitted by you and will be glad to sign it at such time and place as may be indicated for the purpose by the Government of the United States.

My Government have read with interest the explanations contained in your note as to the meaning of the draft treaty, and also the comments which it contains upon the considerations advanced by other powers in the previous diplomatic correspondence.

You will remember that in my previous communication of the 19th May I explained how important it was to my Government that the principle should be recognised that if one of the parties to this proposed treaty resorted to war in violation of its terms, the other parties should be released automatically from their obligations towards that party under the treaty. I also pointed out that respect for the obligations arising out of the Covenant of the League of Nations and of the Locarno treaties was the foundation of the policy of the government of this country, and that they could not agree to any new treaty which would weaken or undermine these engagements.

The stipulation now inserted in the preamble under which any signatory power hereafter seeking to promote its national interests by resort to war against another signatory is to be denied the benefits furnished by the treaty is satisfactory to my Government, and is sufficient

to meet the first point mentioned in the preceding paragraph.

His Majesty's Government in Great Britain do not consider, after mature reflection, that the fulfilment of the obligations which they have undertaken in the Covenant of the League of Nations and in the treaty of Locarno is precluded by their acceptance of the proposed treaty. They concur in the view enunciated by the German Government in their note of the 27th April that those obligations do not contain anything which could conflict with the treaty proposed by the United States Government.

My Government have noted with peculiar satisfaction that all the parties to the Locarno treaty are now invited to become original signatories of the new treaty, and that it is clearly the wish of the United States Government that all members of the League should become parties either by signature or accession. In order that as many states as possible may participate in the new movement, I trust that a general invitation will be extended to them to do so.

As regards the passage in my note of the 19th May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need only repeat that His Majesty's Government in Great Britain accept the new treaty upon the understanding that it does not prejudice their freedom of action in this respect.

I am entirely in accord with the views expressed by Mr. Kellogg in his speech of the 28th April that the proposed treaty does not restrict or impair in any way the right of self-defence, as also with his opinion that each state alone is competent to decide when circumstances necessitate recourse to war for that purpose.

In the light of the foregoing explanations, His Majesty's Government in Great Britain are glad to join with the United States and with all other governments

similarly disposed in signing a definitive treaty for the renunciation of war in the form transmitted in your note of the 23d June. They rejoice to be associated with the Government of the United States of America and the other parties to the proposed treaty in a further and signal advance in the outlawry of war.

I have [etc.]

AUSTEN CHAMBERLAIN

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Commonwealth of
Australia, to the American Chargé (Atherton)*

LONDON, July 18, 1928

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in the Commonwealth of Australia were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that His Majesty's Government in the Commonwealth of Australia have given the most careful consideration to your note above mentioned and to the revised draft treaty which accompanied it, and that they accept the assurance given by the United States Secretary of State that the right of self-defence of a signatory state will not be impaired in any way by acceptance of the proposed treaty.

3. The Commonwealth Government have further observed that it is stated in your note of June 23 that the preamble to the revised treaty accords expressed recognition to the principle that if one signatory state resorts to war in violation of the treaty, the other signatory states will be released from their obligations under

the treaty to that state. They accept this declaration that the preamble in this respect is to be taken as part of the substantive provisions of the treaty itself.

4. They have also particularly examined the draft treaty from the point of view of its relationship to the Covenant of the League of Nations, and in this connexion have come to the conclusion that it is not inconsistent with the latter instrument.

5. His Majesty's Government in the Commonwealth of Australia add that the foregoing are the only questions to which the proposed treaty gives rise in which they are especially interested. As the text of the treaty which has now been submitted is completely satisfactory to them so far as these specific points are concerned, they will be quite agreeable to signing it in its present form.

I have [etc.]

AUSTEN CHAMBERLAIN

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Government of India,
to the American Chargé (Atherton)*

LONDON, July 18, 1928

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether the Government of India were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that the Government of India associate themselves whole-heartedly and most gladly with the terms of the note which I have had the honour to address to you to-day notifying you of the willingness of His Majesty's Government in Great

Britain to sign a multilateral treaty for the renunciation of war as proposed by the Government of the United States.

I have [etc.]

AUSTEN CHAMBERLAIN

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Government of New
Zealand, to the American Chargé (Atherton)*

LONDON, July 18, 1928

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in New Zealand were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that His Majesty's Government in New Zealand desire to associate themselves with the terms of the note which I have had the honour to address to you to-day notifying you of the willingness of His Majesty's Government in Great Britain to sign a multilateral treaty for the renunciation of war as proposed by the Government of the United States. His Majesty's Government in New Zealand desire me to add that they will have the utmost satisfaction, in cooperation with His Majesty's governments in other parts of the British Empire, in joining with the Government of the United States and with all other governments similarly disposed in signing a treaty in the form proposed.

I have [etc.]

AUSTEN CHAMBERLAIN

*The British Secretary of State for Foreign Affairs
(Chamberlain), on behalf of the Union of South
Africa, to the American Chargé (Atherton)*

LONDON, July 18, 1928

SIR: In the note which you were so good as to address to me on June 23 last you stated that the Government of the United States would be glad to be informed whether His Majesty's Government in the Union of South Africa were willing to join with the United States and other similarly disposed governments in signing a definitive treaty for the renunciation of war in the form of the draft treaty enclosed in your note.

2. I now beg leave to inform you that the following message has been received by telegraph from General Hertzog, Minister of External Affairs of the Union of South Africa, for communication to you:

On behalf of His Majesty's Government in the Union of South Africa I have the honour to inform you that my Government have given their most serious consideration to the new draft treaty for the renunciation of war, submitted in your note of 23d June, and to the observations accompanying it.

My Government note with great satisfaction (a) that it is common cause that the right of legitimate self-defence is not affected by the terms of the new draft; (b) that, according to the preamble, any signatory who shall seek to promote its national interests by resort to war shall forfeit the benefits of the treaty; and (c) that the treaty is open to accession by all powers of the world.

My Government have further examined the question whether the provisions of the present draft are inconsistent with the terms of the Covenant of the League of Nations by which they are bound, and have come to the conclusion that this is not the case, and that the objects which the League of Nations was constituted to serve can but be promoted by members of the League of Nations participating in the proposed treaty.

His Majesty's Government in the Union of South Africa have therefore very great pleasure in expressing their willingness to sign, together with all other powers which might be similarly inclined, the treaty in the form proposed in your note under reference.

I have [etc.]

AUSTEN CHAMBERLAIN

*The Czechoslovak Minister of Foreign Affairs (Benes)
to the American Minister (Einstein)*

[Translation]

PRAGUE, July 20, 1928

MR. MINISTER: I have had the honor of receiving your excellency's letter of June 23 by which the Government of the United States invites the Government of the Czechoslovak Republic to sign the proposed treaty for the renunciation of war. The same invitation was transmitted to our representative in Washington. The letter contains in addition to the integral text of the proposed treaty a commentary on the text which explains the remarks of the French Government and indicates in detail the meaning and the significance which the Government of the United States attaches to the multilateral treaty in the event of the treaty's signature, ratification and enactment.

I have the honor to transmit to your excellency by this note the reply of the Czechoslovak Government.

1. First I would very respectfully thank the Government of the United States for having addressed its invitation to us. From the beginning we have followed the negotiations between the French and American Governments on the subject of the pact for the renunciation of war with the greatest sympathy and attention, and were ready at any moment to associate ourselves with this noble undertaking, which marks a memorable date in the history of the world after the war. In our negotiations which I have had the honor, during the last few months, to carry on with the representatives of the United States, France and Great Britain, I have several times emphasized the importance of this act and the political necessity of associating thereto the other powers also and especially those who have assumed obligations by their negotiations at Locarno in 1925. The Government of the United States, agreeing fully in this

with the other powers, has been good enough to recognize the justice of this point of view and addressed to us its invitation. The Czechoslovak Government attributes thereto a considerable political importance and warmly thanks the Washington Government.

2. In accordance with the negotiations prior to the signing of the treaty, as well as by the changes made in the preamble from the original text, and from the explanations contained in your excellency's letter of June 23, 1928, it is clear that there is nothing in this treaty in opposition either to the provisions of the Covenant of the League of Nations, or to those of the Locarno treaties or the neutrality treaties, or, in general, to the obligations contained in existing treaties which the Czechoslovak Republic has hitherto made.

3. From the explanations given in your excellency's letter it is further brought out that any violation of the multilateral treaty by one of the contracting parties would free entirely the other signatory powers from their obligations towards the power which might have violated the stipulations of this treaty; it is furthermore apparent that the right of self-defense is in no way weakened or restricted by the obligations of the new treaty and that each power is entirely free to defend itself according to its will and its necessities against attack and foreign invasion.

4. As thus defined both in the text of the preamble and in the statements of your excellency's letter, the goal of the new treaty, according to the opinion of the Czechoslovak Republic, is to consolidate and maintain peaceful relations and peaceful and friendly collaboration under the contractual terms in which these have to-day been established between the interested nations. By their signature, the contracting parties will renounce war as an instrument of their national policy aimed to satisfy their selfish interests. This would be an immense benefit for humanity; and the Government of the

Czechoslovak Republic rejoices to see that the American Government is ready to offer participation in this treaty on the one hand to the powers who are parties to the neutrality treaties and on the other to all other powers in order to invest it with as universal a character as possible.

5. The Government of the Czechoslovak Republic having noted everything contained in your excellency's note expresses its point of view on this subject as shown in the foregoing, thus confirming the explanations of your note of June 23, 1928. It is very happy to be able to reply in the affirmative to the invitation of the Washington Government and thanking it again and most particularly for its generous effort toward consolidating and maintaining world peace declares that it is now ready to sign the text of the multilateral treaty in accordance with the proposition of his excellency Mr. Kellogg as set forth in your excellency's letter of June 23, 1928.

I venture to add that the Government of the Czechoslovak Republic gladly associates itself with all those who have rendered warm homage to the noble manifestation for world peace made by the Government of the United States and that the foreign policy of our country sees therein the realization of the ends which it has pursued for ten years.

Pray accept [etc.]

EDUARD BENEŠ

*The Japanese Minister for Foreign Affairs (Tanaka)
to the American Chargé (Neville)*

[Translation]

TOKYO, July 20, 1928

MR. CHARGÉ: I have the honor to acknowledge the receipt of your note of the 23d ultimo in which you recall to my attention your Government's identic note of

the 13th of April of this year, enclosing, together with certain correspondence, the preliminary draft of a treaty, and inquiring whether this Government were in a position to give favorable consideration to the latter. Your note under reply further recalls that on the 20th of April the Government of the French Republic circulated among the interested governments an alternative draft treaty, and that on the 28th of April the Secretary of State of the United States of America explained fully the construction placed by that Government on their own draft, in view of the matter emphasized in the French alternative.

You now further inform me that the British, German and Italian Governments have replied to your Government's notes of the 13th April last, and that the Governments of the British self-governing dominions and of India have likewise replied to invitations addressed to them on the suggestion of His Britannic Majesty's Government in Great Britain; and you observe that none of these Governments has expressed any dissent from the construction above referred to, or any disapproval of the principle underlying the proposals, nor have they suggested any specific modifications of the text of the draft; and you proceed to reenforce in detail the explanations made by the Secretary of State in his speech of the 28th April.

You then transmit for the consideration of this Government the revised draft of a multilateral treaty, which takes in the British self-governing dominions, India and all parties to the Locarno treaties, as original parties, and in the preamble of which is included a statement which is directed to recognizing the principle that if a state goes to war in violation of the treaty, the other contracting powers are released from their obligations under the treaty to that state.

Such a multilateral treaty as so revised, you are instructed to state your government are ready to sign at

once, and you express the fervent hope that this Government will be able promptly to indicate their readiness to accept it in this form without qualification or reservation. You conclude by expressing the desire of the Government of the United States to know whether my Government are prepared to join with the United States and other similarly disposed governments in signing a definitive treaty in the form so transmitted.

In reply, I have the honor to inform you that the Japanese Government are happy to be able to give their full concurrence to the alterations now proposed, their understanding of the original draft submitted to them in April last being, as I intimated in my note to his excellency Mr. MacVeagh, dated the 26th of May 1928, substantially the same as that entertained by the Government of the United States. They are therefore ready to give instructions for the signature, on that footing, of the treaty in the form in which it is now proposed.

I can not conclude without congratulating your Government most warmly upon the rapid and general acceptance which their proposals have met with. The Imperial Government are proud to be among the first to be associated with a movement so plainly in unison with the hopes everywhere entertained, and confidently concur in the high probability of the acceptance of this simple and magnanimous treaty by the whole civilized world.

I beg [etc.]

BARON GIICHI TANAKA

*Note of the United States on the subject of adherence to the General Pact for the Renunciation of War—Addressed to Albania, Afghanistan, Argentina, Austria, Bolivia, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Ethiopia, Finland, Greece, Guatemala, Haiti, Honduras, Hungary, Iceland, Latvia, Liberia, Lithuania, Luxemburg, Mexico, Netherlands, Nicaragua, Norway, Panamá, Paraguay, Persia, Perú, Portugal, Rumania, Salvador, Kingdom of the Serbs, Croats and Slovenes, Siam, Spain, Sweden, Switzerland, Turkey, Uruguay and Venezuela*⁴

August 27, 1928

I have the honor to inform you that the Governments of Germany, the United States of America, Belgium, France, Great Britain, Canada, Australia, New Zealand, Union of South Africa, Irish Free State, India, Italy, Japan, Poland and Czechoslovakia have this day signed in Paris a treaty binding them to renounce war as an instrument of national policy in their relations with one another and to seek only by pacific means the settlement or solution of all disputes which may arise among them.

This treaty, as your excellency is aware, is the outcome of negotiations which commenced on June 20, 1927, when M. Briand, Minister of Foreign Affairs of the French Republic, submitted to my Government a draft of a pact of perpetual friendship between France and the United States. In the course of the subsequent negotiations this idea was extended so as to include as original signatories of the antiwar treaty not only France and the United States but also Japan, the British Empire and all the Governments which participated with France and Great Britain in the Locarno agreements, namely, Belgium, Czechoslovakia, Germany, Italy and

⁴ The Union of Soviet Socialist Republics was invited to adhere by the French government through the French ambassador at Moscow.

Poland. This procedure met the point raised by the British Government in its note of May 19, 1928, where it stated that the treaty from its very nature was not one which concerned that Government alone, but was one in which that Government could not undertake to participate otherwise than jointly and simultaneously with the Governments in the Dominions and the Government of India; it also settled satisfactorily the question whether there was any inconsistency between the new treaty and the treaty of Locarno, thus meeting the observations of the French Government as to the necessity of extending the number of original signatories.

The decision to limit the original signatories to the powers named above, that is, to the United States, Japan, the parties to the Locarno treaties, the British Dominions and India, was based entirely upon practical considerations. It was the desire of the United States that the negotiations be successfully concluded at the earliest possible moment and that the treaty become operative without the delay that would inevitably result were prior universal acceptance made a condition precedent to its coming into force. My Government felt, moreover, that if these powers could agree upon a simple renunciation of war as an instrument of national policy there could be no doubt that most, if not all, of the other powers of the world would find the formula equally acceptable and would hasten to lend their unqualified support to so impressive a movement for the perpetuation of peace. The United States has, however, been anxious from the beginning that no state should feel deprived of an opportunity to participate promptly in the new treaty and thus not only align itself formally and solemnly with this new manifestation of the popular demand for world peace but also avail itself of the identical benefits enjoyed by the original signatories. Accordingly in the draft treaty proposed by it the United States made specific provision for participation in the treaty by any and

every power desiring to identify itself therewith, and this same provision is found in the definitive instrument signed to-day in Paris. It will also be observed that the powers signing the treaty have recorded in the preamble their hope that every nation of the world will participate in the treaty, and in that connection I am happy to be able to say that my Government has already received from several Governments informal indications that they are prepared to do so at the earliest possible moment. This convincing evidence of the world-wide interest and sympathy which the new treaty has evoked is most gratifying to all the Governments concerned.

In these circumstances I have the honor formally to communicate to your excellency for your consideration and for the approval of your Government, if it concurs therein, the text of the above-mentioned treaty as signed to-day in Paris, omitting only that part of the preamble which names the several plenipotentiaries. The text is as follows:

[The text of the treaty is omitted.]

The provisions regarding ratification and adherence are, as your excellency will observe, found in the third and last article. That article provides that the treaty shall take effect as soon as the ratifications of all the powers named in the preamble shall have been deposited in Washington, and that it shall be open to adherence by all the other powers of the world, instruments evidencing such adherence to be deposited in Washington also. Any power desiring to participate in the treaty may thus exercise the right to adhere thereto and my Government will be happy to receive at any time appropriate notices of adherence from those Governments wishing to contribute to the success of this new movement for world peace by bringing their peoples within its beneficent scope. It will be noted in this connection that the treaty expressly provides that when it has once

come into force it shall take effect immediately between an adhering power and the other parties thereto, and it is therefore clear that any Government adhering promptly will fully share in the benefits of the treaty at the very moment it comes into effect.

I shall shortly transmit for your excellency's convenient reference a printed pamphlet containing the text in translation of M. Briand's original proposal to my Government of June 20, 1927, and the complete record of the subsequent diplomatic correspondence on the subject of a multilateral treaty for the renunciation of war. I shall also transmit, as soon as received from my Government, a certified copy of the signed treaty.

ADDRESSES OF SECRETARY OF STATE THE HONORABLE FRANK B. KELLOGG

THE WAR PREVENTION POLICY OF THE UNITED STATES¹

MR. CHAIRMAN: It has been my privilege during the past few months to conduct on behalf of the Government of the United States negotiations having for their object the promotion of the great ideal of world peace. Popular and governmental interest in the realization of this ideal has never been greater than at the present time. Ever since the World war, which spelled death to so many millions of men, spread desolation over so much of the continent of Europe and shocked and imperiled neutral as well as belligerent nations, the minds of statesmen and of their peoples have been more and more concerned with plans for preventing the recurrence of such a calamity. Not only has the League of Nations been preoccupied with studies of security and world peace, but members of the League of Nations have concluded additional special treaties like those signed at Locarno in 1925, and recently at Habana the United States and twenty other American states, including seventeen members of the League of Nations, expressed by formal declaration their unqualified condemnation of war as an instrument of national policy, and agreed to call a conference to draft appropriate treaties of compulsory arbitration.

The Government of the United States will never be a laggard in any effective movement for the advancement of world peace, and the negotiations which I have

¹ Address delivered before the Council on Foreign Relations, at New York City, March 15, 1928.

recently been carrying on have grown out of this Government's earnest desire to promote that ideal. They have had a dual character, having been concerned in part with the framing of new arbitration treaties to replace the so-called Root treaties, several of which expire by limitation this year, and in part with the antiwar treaty M. Briand proposed to me last summer. I welcome the opportunity which you have afforded me to express before this audience my views on these questions and to explain the objects and aims of the Government of the United States with respect thereto.

In the first place it should be clearly understood that the treaty of arbitration which was signed last month with France has no relation whatsoever to the proposal submitted by M. Briand for a treaty declaring against war and renouncing it as an instrument of national policy. It is true that the preamble to the arbitration treaty recites that France and the United States are "eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when the perfection of international arrangements for the pacific settlement of international disputes shall have eliminated forever the possibility of war among any of the powers of the world," but a preamble is not a binding part of a treaty. If war is to be abolished it must be through the conclusion of a specific treaty solemnly binding the parties not to resort to war with one another. It cannot be abolished by a mere declaration in the preamble of a treaty. Even though without legal effect, however, a formal expression of the peaceful aspirations of the governments and their common desire to perfect a mechanism for the pacific settlement of justiciable disputes, such as that found in the preamble of the arbitration treaty, is, I believe, very helpful since it publicly defines the positions of the two governments in a matter the importance of which is hard to exaggerate.

The arbitration treaty itself I regard as a distinct advance over any of its predecessors, and I hope it can serve as a model for use in negotiations with other governments with which we have no present arbitration treaty or where the existing Root treaties shortly expire. I have already instituted negotiations with the British, German, Italian, Japanese, Norwegian and Spanish governments on the basis of the draft treaty which I submitted to France last December, and I have indicated to all inquiring governments that I shall be pleased to conclude with them new treaties similar to that recently signed with France. If a comprehensive series of such bilateral treaties can be put into effect between the United States and the other nations of the world, I feel that a very effective mechanism for the pacific settlement of justiciable disputes will have been established. I attach such importance to the treaty just concluded with France that I shall discuss its provisions briefly before proceeding to a discussion of the correspondence which has been exchanged with France on the subject of the so-called Briand proposal.

Article 1 of the new arbitration treaty contains the language of the first paragraph of the first article of the Bryan treaty of 1914 providing for investigation and report by a permanent international commission of all disputes not settled by diplomacy or submitted to arbitration. My purpose in including this reference to the Bryan treaty was to recognize anew the efficacy of the procedure established under the Bryan treaties and to unite by reference in one document the related processes of conciliation and arbitration. The force and effect of the Bryan treaty with France has in no sense been impaired by the new treaty, nor was it intended that it should be. This is the understanding of both governments and notes to that effect have been exchanged. So far as the legal effect of the new treaty is concerned, Article 1 could be left out entirely and mention of the

Bryan treaty made only in Article 2 where there is reference to the conciliation procedure under that treaty.

Article 2 provides that:

All differences relating to international matters in which the high contracting parties are concerned by virtue of a claim of right by one against the other under treaty or otherwise, which it has not been possible to adjust by diplomacy, which have not been adjusted as a result of reference to the above-mentioned Permanent International Commission, and which are justiciable in their nature by reason of being susceptible of decision by the application of the principles of law or equity, shall be submitted to the Permanent Court of Arbitration established at The Hague by the convention of October 18, 1907, or to some other competent tribunal, as shall be decided in each case by special agreement, which special agreement shall provide for the organization of such tribunal if necessary, define its powers, state the question or questions at issue, and settle the terms of reference.

It also contains a clause providing that the special agreement must in each case be ratified with the advice and consent of the Senate. This is the usual practice in the United States and I do not know of a single case where the Senate has refused to consent to any special agreement of arbitration.

Article 3 excludes from arbitration under the treaty disputes the subject matter of which is within the domestic jurisdiction of either of the parties, involves the interests of third parties, depends upon or involves the maintenance of the Monroe Doctrine, and depends upon or involves the observance of the obligations of France under the Covenant of the League of Nations. It is difficult for me to see by what claim of right any government could properly request arbitration of disputes covered by these exceptions since few, if any, would present questions justiciable in their nature. As a practical matter, therefore, I do not feel that the general applicability of the new treaty is materially restricted by the four clauses of exclusion. The Root treaty which it supersedes contained a clause excluding from its scope questions affecting "the vital interests, the independence

or the honor" of the contracting states. This clause was borrowed from an Anglo-French arbitration treaty of 1903 and represented the reservations generally regarded as necessary twenty-five years ago. Arbitration has repeatedly proved its worth since then, and inasmuch as such vague and all-inclusive exceptions can be construed to cover almost any substantial international dispute and might well operate to defeat the very purpose of an arbitration treaty, I decided to eliminate them and to specify with particularity the questions excluded from arbitration. In this respect the new treaty is a much more satisfactory and practical instrument for the adjustment of justiciable international controversies, and it is only justiciable questions that are susceptible to arbitration.

I do not agree with the pronouncement of many organizations and publicists engaged in the discussion of international arbitration to the effect that every question between nations should be arbitrated. This is a very simple and all-inclusive formula but it will not stand the test of careful examination, and never has and never can be universally adopted. Let us consider for a moment what questions are susceptible of arbitration and can be submitted by nations to the decision of an international court. They are exactly the same kind of questions as can be arbitrated between citizens of the United States or submitted to the decision of a local court under our form of government; that is to say, they are questions arising under contract or under the law of the land. Applying this analogy in international relations, we find that the questions which are susceptible of arbitration or impartial decision are those involving rights claimed under a treaty or under international law. A political question cannot be arbitrated because there are no principles of law by which it can be decided, and unless there are relevant treaty provisions requiring construction, no nation can agree to arbitrate purely do-

mestic questions like tariff, taxation, immigration and, it may be said, all political questions involving the exercise of sovereignty within the nation's territorial limits. There are no positive rules of international law applicable to such questions to guide arbitrators in reaching a decision.

I am confident that the enthusiastic supporters of the theory that all questions between nations should be submitted to arbitration have not realized the vital difference between justiciable and political questions. Take, for example, the question of immigration which at times arouses bitter feelings between nations. On what principle could a government arbitrate this question, and what rules could be applied to guarantee justice to the disputants? It seems to me we must realize that so long as the world is composed of separate, sovereign nations, only those questions can properly be submitted to arbitration which, being justiciable in their nature, are susceptible of determination by the application of recognized rules of law or equity. Non-justiciable or political questions must, if they threaten to bring on hostilities, be adjusted through other means, such as conciliation, where a disinterested effort is made to reconcile conflicting points of view without finding necessarily that either party was in the wrong.

It is when arbitration cannot or will not be invoked by the parties that conciliation treaties have their greatest value for adjusting international irritations tending to inflame public opinion and imperil the peace of the world. One of the first of our treaties establishing a procedure for conciliation was the so-called Knox treaty of 1911. That treaty, which was also a treaty of arbitration, was never proclaimed by the President because of certain reservations attached by the Senate in advising and consenting thereto. These reservations, however, did not affect the conciliation provisions of the treaty and need not be discussed in this connection. Our next conciliation treaties were the Bryan treaties to which I have

already referred. The first of these was signed in 1913 and there are eighteen of them now in force. In 1923 we became parties to two other conciliation treaties, namely, that signed at Washington on February 7, 1923, between the United States and the Five Central American republics, and that signed at Santiago on May 3, 1923, between the United States and fifteen Latin American countries. Both of these treaties have been ratified by the United States. They are similar to the Bryan treaties, the principal point of difference being as to the manner of constituting the commissions of inquiry.

The Bryan treaties provide, you will recall, that any dispute shall, when ordinary diplomatic proceedings have failed and the parties do not have recourse to arbitration, be submitted for investigation and report to a Permanent International Commission composed of five members, two of whom, a national and a non-national, being designated by each of the two governments, and the fifth member by agreement. The commission is bound to report within a year from the date on which it takes jurisdiction of the case, and the parties agree not to resort to any act of force prior to the commission's report, reserving, however, full liberty of action with respect to the report itself.

The United States has been a party to conciliation treaties for fifteen years, and while there has never yet been an occasion for invoking them, I know of no reason why this country should object to an inquiry by a commission of conciliation if war is threatened. It is claimed in some quarters that purely domestic questions might be inquired into by these commissions of conciliation. While I cannot conceive that any government would feel justified in demanding an inquiry by the commission into a matter solely within the domestic jurisdiction of another government, I do not feel that the point is material. The object which is sought to be attained by conciliation treaties is the prevention of war, and in

my opinion any government can well afford to submit to inquiry any question which may threaten to involve it in the horrors of war, particularly when, as in the Bryan and other treaties I have just mentioned, the findings of the commission have no binding force and to be effective must be voluntarily accepted.

The world is more and more alive to the necessity of preventing war, and I think it is significant that the Sixth International Conference of American States which recently concluded its labors at Habana adopted two antiwar resolutions one of which contains the unqualified statement that "the American republics desire to express that they condemn war as an instrument of national policy in their mutual relations," which, it is interesting to note, is the language of M. Briand's original proposal to me. The other resolution contains the statement that "war of aggression constitutes an international crime against the human species" and the declaration that "all aggression is considered illicit and as such is declared prohibited." It is the former resolution that I regard as of the greatest interest at this time because, of the twenty-one states represented at the Habana Conference, seventeen, while members of the League of Nations, were not prevented by such membership from joining in an unqualified declaration against war. This general resolution is also important because it endorses the principle of compulsory arbitration for justiciable disputes and provides for the calling of a conference in Washington within a year to draft appropriate treaties of arbitration and conciliation.

I have discussed at some length the provisions of the new arbitration treaty with France. I have also outlined the scope and purpose of the many conciliation treaties which the United States has concluded with other governments. I know of but one other form of treaty which can be concluded for the purpose of preventing war and that is a treaty in which the parties specifically bind

themselves not to resort to war. It is this kind of treaty which people have in mind when they discuss treaties for outlawing war, and it is a novel idea in modern international relations.

As you are all aware, in a communication dated June 20, 1927, M. Briand proposed to the United States the conclusion of a bilateral treaty under the terms of which France and the United States would agree to renounce war as an instrument of their national policy towards each other. This treaty provided, first, that—

The high contracting powers solemnly declare, in the name of the French people and the people of the United States of America, that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.

and secondly that—

The settlement or the solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise between France and the United States of America, shall never be sought by either side except by pacific means.

This important and inspiring proposal was carefully and sympathetically studied by the Government of the United States. While we might well have hesitated to take the initiative in proposing such a treaty to Europe, the invitation from France afforded us an opportunity to examine anew the whole question of world peace and to determine in what practical manner we could best cooperate. We made that examination, and, in my note of December 28, 1927, after expressing the sincere appreciation of the United States for the offer which France had so impressively submitted, I warmly seconded M. Briand's proposition that war be formally renounced as an instrument of national policy, but suggested that instead of giving effect thereto in a bilateral treaty between France and the United States, an equivalent multilateral treaty be concluded among the principal powers of the world, open to adherence by any and all

nations, thus extending throughout the world the benefits of a covenant originally suggested as between France and the United States alone. The powers which I suggested be invited in the first instance to join with France and the United States in such a treaty were Great Britain, Germany, Italy and Japan.

France, I am happy to say, promptly agreed in principle to the idea of a multilateral treaty. France suggested, however, that the treaty provide only for the renunciation of wars of aggression, explaining that while France could conclude a bilateral treaty with the United States providing for the unqualified renunciation of war, the conclusion of a similar multilateral treaty presented certain difficulties in view of the obligations of France under the Covenant of the League of Nations, treaties such as those signed at Locarno in October 1925 and other international conventions relating to guaranties of neutrality. The French Government also pointed out that in September 1927 the members of the League of Nations adopted a resolution condemning aggressive war as an international crime. In these circumstances France expressed the opinion that the common object of the two governments could best be attained by framing the proposed antiwar treaty so as to cover wars of aggression only. I have not been able to agree to that reservation.

My objection to limiting the scope of an antiwar treaty to mere wars of aggression is based partly upon a very real disinclination to see the ideal of world peace qualified in any way, and partly upon the absence of any satisfactory definition of the word "aggressor" or the phrase "wars of aggression." It is difficult for me to see how a definition could be agreed upon which would not be open to abuse. The danger inherent in any definition is recognized by the British Government which in a memorandum recently submitted to the Subcommittee on Security of the Preparatory Committee on Disarmament

of the League of Nations discussed attempted definitions of this character, and quoted from a speech by the British Foreign Secretary in which Sir Austen said:

I therefore remain opposed to this attempt to define the aggressor because I believe that it will be a trap for the innocent and a signpost for the guilty.

I agree with Sir Austen on this point.

It seems to me that any attempt to define the word "aggressor" and by exceptions and qualifications to stipulate when nations are justified in going to war with one another, would greatly weaken the effect of any treaty such as that under consideration and virtually destroy its positive value as a guaranty of peace. And in my last note to the French Government I stated expressly that I could not avoid the feeling that if governments should publicly acknowledge that they could only deal with this ideal of world peace in a technical spirit and must insist upon the adoption of reservations impairing if not utterly destroying the true significance of their common endeavors, they would be in effect only recording their impotence to the keen disappointment of mankind in general.

In my note of February 27, 1928, I also discussed at some length the question raised by the Government of France whether, as a member of the League of Nations and as a party to the treaties of Locarno and other treaties guaranteeing neutrality, France could agree with the United States and the other principal world powers not to resort to war in their mutual relations without *ipso facto* violating their present obligations under those treaties. I pointed out that if those obligations could be interpreted so as to permit France to conclude with the United States alone a treaty such as that proposed by M. Briand, it was not unreasonable to suppose that they could be interpreted with equal justice so as to permit France to join with the United States in

offering to conclude an equivalent multilateral treaty with the other principal powers of the world. I stated that it seemed to me that the difference between the bilateral and multilateral form of treaty having for its object the unqualified renunciation of war, was one of degree and not of substance, and that a government able to conclude such a bilateral treaty should be no less able to become a party to an identical multilateral treaty, since it could hardly be presumed that members of the League of Nations were in a position to do separately something that they could not do together.

In these circumstances I expressed the earnest hope that France, which admittedly perceives no bar to the conclusion of an unqualified antiwar treaty with the United States alone, would be able to satisfy itself that an equivalent treaty among the principal world powers would be equally consistent with membership in the League of Nations, adding that if members of the League of Nations could not, without violating the terms of the Covenant, agree among themselves and with the United States to renounce war as an instrument of their national policy, it seemed idle to discuss either bilateral or multilateral treaties unreservedly renouncing war. In that connection I called attention to the fact that the twenty-one American states represented at the recent Habana Conference adopted a resolution unqualifiedly condemning war as an instrument of national policy in their mutual relations, and to the fact that seventeen of the twenty-one states represented at that conference are members of the League of Nations.

I concluded my note with the unequivocal statement that the Government of the United States desires to see the institution of war abolished and stands ready to conclude with the French, British, Italian, German and Japanese Governments a single multilateral treaty open to subsequent adherence by any and all other governments binding the parties thereto not to resort to war

with one another. This is the position of the Government of the United States, and this is the object which we are seeking to attain.

I cannot believe that such a treaty would violate the terms of the League Covenant or conflict necessarily with the obligations of the members of the League. Even Article 10 of the Covenant has been construed to mean that League members are not inescapably bound thereby to employ their military forces. According to a recent statement by the British Government, many members of the League accept as the proper interpretation of Article 10 a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote. That resolution stated explicitly:

It is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces.

I earnestly hope, therefore, that the present negotiations looking to the conclusion of an unqualified multilateral antiwar treaty may ultimately achieve success, and I have no doubt that if the principal powers of the world are united in a sincere desire to consummate such a treaty, a formula can be devised which will be acceptable to them all. Since, however, the purpose of the United States is so far as possible to eliminate war as a factor in international relations, I cannot state too emphatically that it will not become a party to any agreement which directly or indirectly, expressly or by implication, is a military alliance. The United States cannot obligate itself in advance to use its armed forces against any other nation of the world. It does not believe that the peace of the world or of Europe depends upon or can be assured by treaties of military alliance, the futility of which as guarantors of peace is repeatedly demonstrated in the pages of history.

Mr. Chairman, I must not claim that treaties of arbitration and conciliation, or even treaties explicitly renouncing war as an instrument of national policy, afford a certain guaranty against those conflicts between nations which have periodically broken out since the dawn of world history. In addition to treaties there must be an aroused public conscience against the utter horror and frightfulness of war. The peoples of the world must enjoy a peaceful mind, as it has been said, and treaties such as those I have discussed this evening, and the efforts of statesmen to advance the cause of world peace, can only be regarded as a portion of the problem. I am not so blind as to believe that the millenium has arrived, but I do believe that the world is making great strides toward the pacific adjustment of international disputes and that the common people are of one mind in their desire to see the abolition of war as an institution. Certainly the United States should not be backward in promoting this new movement for world peace, and both personally and officially as Secretary of State, I shall always support and advocate the conclusion of appropriate treaties for arbitration, for conciliation and for the renunciation of war.

THE FRENCH DRAFT OF THE MULTILATERAL TREATY FOR THE RENUNCIATION OF WAR²

MR. PRESIDENT, MR. AMBASSADOR, LADIES AND GENTLEMEN: Last year M. Briand made a great proposition to the United States, and M. Briand, the French Ambassador and I are now trying to negotiate a multilateral treaty denouncing war and agreeing not to resort to it for the settlement of international disputes. I wish to pay my sincere tribute to the great ideals and

² Excerpt from an address delivered before the American Society of International Law, Washington, April 28, 1928.

the high-mindedness and patriotism of M. Briand in his work for peace. I also want to pay tribute to the Ambassador who has so loyally cooperated with him. We have different views, to be sure, and if you will bear with me for a few moments I would like to outline the present situation.

There seem to be six major considerations which the French Government has emphasized in its correspondence and in its draft treaty; namely, that the treaty must not (1) impair the right of legitimate self defense; (2) violate the Covenant of the League of Nations; (3) violate the treaties of Locarno; (4) violate certain unspecified treaties guaranteeing neutrality; (5) bind the parties in respect of a state breaking the treaty; (6) come into effect until accepted by all or substantially all of the powers of the world. The views of the United States on these six points are as follows:

(1) *Self defense.* There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self defense. If it has a good case, the world will applaud and not condemn its action. Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. Inasmuch as no treaty provision can add to the natural right of self defense, it is not in the interest of peace that a treaty should stipulate a juristic conception of self defense since it is far too easy for the unscrupulous to mold events to accord with an agreed definition.

(2) *The League Covenant.* The Covenant imposes no affirmative primary obligation to go to war. The

obligation, if any, is secondary and attaches only when deliberately accepted by a state. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote, to mean that "it is for the constitutional authorities of each member to decide, in reference to the obligation preserving the independence and integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employment of its military forces." There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances but it is an authorization and not a positive requirement.

(3) *The treaties of Locarno.* If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that if all the parties to the Locarno treaties become parties to the multilateral antiwar treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such event it would follow that resort to war by any state in violation of the Locarno treaties would also be a breach of the multilateral antiwar treaty and the other parties to the antiwar treaty would thus as a matter of law be automatically released from their obligations thereunder and free to fulfil their Locarno commitments. The United States is entirely willing that all parties to the Locarno treaties should become parties to its proposed antiwar treaty either through signature in the first instance or by immediate accession to the treaty as soon as it comes into force in the manner provided in Article 3 of the American draft, and it will offer no objection when and if such a suggestion is made.

(4) *Treaties of neutrality.* The United States is not informed as to the precise treaties which France has in mind and cannot therefore discuss their provisions. It is not unreasonable to suppose, however, that the relations between France and the states whose neutrality she has guaranteed are sufficiently close and intimate to make it possible for France to persuade such states to adhere seasonably to the antiwar treaty proposed by the United States. If this were done no party to the antiwar treaty could attack the neutralized states without violating the treaty and thereby automatically freeing France and the other powers in respect of the treaty-breaking state from the obligations of the antiwar treaty. If the neutralized states were attacked by a state not a party to the antiwar treaty, the latter treaty would of course have no bearing and France would be as free to act under the treaties guaranteeing neutrality as if she were not a party to the antiwar treaty. It is difficult to perceive, therefore, how treaties guaranteeing neutrality can be regarded as necessarily preventing the conclusion by France or any other power of a multilateral treaty for the renunciation of war.

(5) *Relations with a treaty-breaking state.* As I have already pointed out, there can be no question as a matter of law that violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state. Any express recognition of this principle of law is wholly unnecessary.

(6) *Universality.* From the beginning it has been the hope of the United States that its proposed multilateral antiwar treaty should be world-wide in its application, and appropriate provision therefor was made in the draft submitted to the other governments on April 13. From a practical standpoint it is clearly preferable, however, not to postpone the coming into force of an antiwar treaty until all the nations of the world can agree

upon the text of such a treaty and cause it to be ratified. For one reason or another a state so situated as to be no menace to the peace of the world might obstruct agreement or delay ratification in such manner as to render abortive the efforts of all the other powers. It is highly improbable, moreover, that a form of treaty acceptable to the British, French, German, Italian and Japanese Governments, as well as to the United States, would not be equally acceptable to most, if not all, of the other powers of the world. Even were this not the case, however, the coming into force among the above-named six powers of an effective antiwar treaty and their observance thereof would be a practical guaranty against a second world war. This in itself would be a tremendous service to humanity and the United States is not willing to jeopardize the practical success of the proposal which it has made by conditioning the coming into force of the treaty upon prior universal or almost universal acceptance.

THE SETTLEMENT OF INTERNATIONAL CONTROVERSIES BY PACIFIC MEANS¹

MR. CHAIRMAN: In this period of great progress in cordial understanding between nations, I am pleased to accept your invitation to discuss the steps taken by the United States, in collaboration with other nations, to advance amicable relations, to remove the causes of war and to pledge the nations solemnly to renounce war as an instrument of their national policy and adopt instead the principle of the settlement of all disputes by pacific means. No more fitting time could be chosen for this peace movement than the tenth anniversary of the signing of the Armistice which brought to a close the greatest war, the most appalling catastrophe of all the ages.

¹ An address delivered before the World Alliance for International Friendship, New York, November 11, 1928.

The best way to abolish war as a means of settling international disputes, is to extend the field of arbitration to cover all juridical questions, to negotiate treaties applying the principles of conciliation to all questions which do not come within the scope of arbitration and to pledge all the nations of the world to condemn recourse to war, renounce it as an instrument of international policy, and declare themselves in favor of the settlement of all controversies by pacific means. Thus may the illegality of war be established in the world as a principle of international law.

There is one other means, which can be taken by governmental authorities and also by private organizations like yours throughout the world, and that is to inculcate into the minds of the people a peaceful attitude, teaching them that war is not only a barbarous means of settling disputes but one which has brought upon the world the greatest affliction, suffering and disaster. If the people are minded that there shall be no war, there will not be. Arbitration is the machinery by which peace may be maintained. It cannot function effectively unless there is back of it a popular will for peace.

I cannot go into detail concerning all the steps which have been taken to extend the principles of arbitration and conciliation as a part of the machinery for the maintenance of peace. In a general way, I can say that when I came into office I found that on account of the war many of our arbitration treaties and treaties of amity and commerce had lapsed and that many of the boards of conciliation under the Bryan treaties had become incomplete or vacant through death or resignation. These boards have been filled and there are now in force nineteen of the original Bryan treaties, among the signatories being included many of the principal nations of the world. We have already negotiated five new treaties and are negotiating many more. We have negotiated

with many countries a new arbitration treaty for the settlement of all juridical questions which is an advance over the old form of treaty. In Central and South America practically all of the countries have signed and ratified a general conciliation treaty, to which the United States is a party. Under this treaty, in the event of failure to settle a dispute by diplomatic means or arbitration, the signatory nations agree to submit it to boards of conciliation for examination and report and not to go to war for a reasonable time pending such examination. Furthermore, pursuant to a resolution of the Pan American Conference held in Habana in January and February 1928, the United States has called a conference on arbitration and conciliation of all the states parties to the Pan American Union to be held in Washington on December 10. Thus it will be seen that the United States and the nations of all Central and South America are taking steps to extend the principles of arbitration and conciliation.

I might, if I had the time, show you the progress of this principle in other nations. It is evident that there is a great forward movement all over the world and a growth of an enlightened sentiment for the settlement of international controversies by means other than the arbitrament of war. I might mention in this connection the Locarno treaties and many others negotiated in Europe as well as in Central and South America. Probably no part of the world has made such progress in arbitration as Central and South America, and certainly there is no part of the world where the sentiment for peace is stronger and, consequently, where there is less danger of the outbreak of war.

Arbitration and conciliation are appealing more and more to the imagination of the peoples of all nations. I deem this movement of surpassing importance in the advancement of world peace. When all nations come to the conclusion that their disputes can best be settled

by diplomatic means and, when these fail, by arbitration or commissions of conciliation, the world will have made a great step forward. I realize that treaties of arbitration and conciliation have existed for many years and that in spite of them there occurred the greatest war of all history. But this should not be a cause of discouragement, because today world sentiment is stronger for such means of settling international disputes than ever before. I realize also that there are many political questions which cannot be arbitrated, although they may be settled by conciliation. I know that national jealousies and ambitions and racial animosities often are the causes of war. These causes of conflict can be eliminated through education, through the development of tolerance, and through the creation of an effective desire for peace.

In addition to these means of insuring universal peace, I know of but one other step, and that is a treaty solemnly pledging all the nations of the earth to condemn recourse to war, to renounce it as an instrument of their national policy toward each other, and solemnly to declare that the settlement of international disputes, of whatever nature or of whatever origin they may be, shall never be sought except by pacific means. This leads me to the discussion of the multilateral antiwar treaty lately signed in Paris.

As you know, the original suggestion of this movement came from Monsieur Briand, Minister of Foreign Affairs of France, in a proposition to the United States to enter into a bilateral treaty with France to abjure war as a means of settling disputes between them. The American Government believed that this grand conception should be extended to all the nations of the world so that its declaration might become a part of international law and the foundation stone for a temple of everlasting peace. I need not discuss the details of this negotiation, which lasted more than a year. All notes

exchanged between the nations upon this subject were published from time to time as they were sent by the various powers. It seemed clear that no treaty of such world-wide importance, so affecting the peoples of all nations, marking so great a forward step, could be taken without the support not only of the statesmen but of the press and the people of the world themselves, and, as you know, the multilateral antiwar treaty was negotiated in the blazing light of full publicity.

The announcement of the purpose to negotiate such a treaty was at first met by much skepticism, the expression of which soon ended because it was drowned in the voice of the people of all nations strongly supporting the movement. The consummation of the treaty was not the work of any single nation or of any individual. It is doubtful if such a treaty could have been negotiated between the ministers of the different governments in secret. I did not attempt it. Neither did Monsieur Briand. We could not have succeeded. And the reason for this is that the treaty is the expression of the hope of millions of people in the world today. It came from the visualized expression of the desolated battlefields, from ruined homes and broken men, and stirred the great beating heart of humanity. Is there any wonder that there should be in this modern and enlightened age a world-wide protest against the horrors of war? We are but ten years removed from the greatest calamity of all time. No one can portray the desolation, death or the misery and sorrow inflicted by that last conflict. As we look back over the ages on the gradual growth and advancement of our civilization, is there any wonder that the people are now demanding some guaranty for peace?

In the negotiation of this treaty I had the hearty cooperation of the statesmen of other countries, of President Coolidge, of statesmen of all parties, and of publicists throughout the United States. It was not a politi-

cal move. I consulted with senators and representatives and public men, the sanest and wisest of our time, and I can say without the slightest doubt that the treaty meets the matured judgment of the people of the United States.

It was an impressive sight when representatives of fifteen nations gathered around the historic table in the French Foreign Office and solemnly pledged their governments before the world to renounce war as an instrumentality of their countries, agreeing to settle all international disputes by pacific means.

The treaty is a simple and plain declaration and agreement. It is not cumbered with reservations and conditions stipulating when a nation might be justified in going to war. Such a treaty, if attempted, would fail because of the complexity of national aspirations and the wide difference of conditions. It contains but two articles, as follows:

ARTICLE 1. The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

ARTICLE 2. The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

There are some matters which have been the subject of press comment which I desire to discuss. I have been asked why we did not attempt to negotiate the treaty with all the nations of the world and make them original signatories. The reasons are these: it was my opinion that to attempt to negotiate a treaty with over sixty nations would entail so much discussion and so prolong the negotiations as to make it difficult, if not impossible, to sign a treaty and obtain its ratification within a reasonable time. Furthermore, if any one country failed to ratify, the treaty would not go into effect,

thereby postponing the matter for an indefinite period. It seemed to me best to select four of the large nations of Europe, the seat of the last war, where there was perhaps more danger of conflict than anywhere else, and Japan in the Far East, and to negotiate with them a treaty which would be open to adhesion by all the nations of the world. I felt sure, after very careful consideration, that a treaty satisfactory to those powers would be readily accepted by the others. There were two additions to the six original powers involved in the negotiation, the British Dominions and India and the additional powers parties to the Locarno treaties. The British Government, for example, stated that the proposed treaty from its very nature was not one which concerned His Majesty's Government in Great Britain alone but was one in which they could not undertake to participate otherwise than jointly and simultaneously with the Governments in the Dominions and the Government of India, and suggested that the United States invite those governments to become original signatories. This was done and the Dominions and India promptly and readily accepted the treaty and signed at the same time as the British Government.

In the course of the discussion, France raised the question of whether the proposed treaty would in any way conflict with the obligations of the Locarno treaties, the League of Nations or other treaties guaranteeing neutrality. My reply was that I did not understand the League of Nations to impose any obligation to go to war; that the question must ultimately be decided by each country for itself; that if there was any similar obligation in the Locarno treaties, the United States would agree that all of the powers parties to the Locarno treaties should become original signatories of the present treaty. Belgium, Poland and Czechoslovakia therefore were brought in as original parties because they were the only signatories to the Locarno treaties outside of

the nations included in the negotiations of the antiwar treaty. The following countries were parties to the Locarno treaties: Great Britain, France, Belgium, Germany, Italy, Czechoslovakia and Poland. The treaty contained a clause undertaking not to go to war, and if there was a flagrant violation by one of the high contracting parties, each of the other parties undertook immediately to come to the help of the party against whom such violation or breach was directed. It, therefore, was simply a matter of law that if any of the parties to the Locarno treaties went to war in violation of that treaty and were at the same time parties to the multilateral treaty, they would violate this treaty also; and that it was a general principle of law that if one of the parties to a treaty should violate it, the others would be released, and would be entirely free and under no obligation to take any action unless they saw fit.

For these reasons the Locarno powers became original signatories, and all of the nations agreed that under these circumstances no modification of the present treaty was needed. It was my expectation that if the treaty was signed, it would be readily adhered to by many, if not all, of the other nations. My expectations have been more than fulfilled. Up to the present time fifty-eight nations have either signed the treaty as original parties, or have adhered to it or have notified the department of their intention to adhere to it. It is my belief that all the nations of the world will adhere to this treaty and make it one of the principles of their national policy. I believe that this is the first time in history when any treaty has received the approval of so many nations of the world.

There are no collateral reservations or amendments made to the treaty as finally agreed upon. During the negotiation of this treaty, as in the case of other treaties, questions were raised by various governments and discussed, and in many of my notes I explained the legal

effect or construction of the treaty. There is nothing in any of these notes, or in my speeches sent to the signatory powers during the negotiations, which is inconsistent with, or changes the meaning of, the treaty as finally signed. Finally the countries were satisfied that no modification of the treaty was necessary to meet their views.

To illustrate: The question was raised as to whether this treaty prevented a country from defending itself in the event of attack. It seemed to me incomprehensible that any nation should believe that a country should be deprived of its legitimate right of self defense. No nation would sign a treaty expressly or clearly implying an obligation denying it the right to defend itself if attacked by any other country. I stated that this was a right inherent in every sovereign state and that it alone is competent to decide whether circumstances require resort to war in self defense. If it has a good case, the world will applaud it and not condemn it, but a nation must answer to the tribunal of public opinion as to whether its claim of the right of self defense is an adequate justification for it to go to war.

In the discussion of the treaty I noticed in one or two instances a criticism that by recognizing the right of self defense, the treaty had been greatly weakened—that if a nation should go to war claiming that it was acting in self defense, the mere claim must be accepted by the peoples of the world and that, therefore, the multilateral treaty does not change the present juridical position. I cannot agree with this criticism. As I have already stated, a nation claiming to act in self defense must justify itself before the bar of world opinion as well as before the signatories of the treaty. For that reason I declined to place in the treaty a definition of aggressor or of self defense because I believed that no comprehensive legalistic definition could be framed in advance. Such an attempt would have led to endless difficulty.

For years statesmen interested in preventing war have tried to frame definitions of aggressor and the right of self defense in an attempt to prevent conflicts between states. They have failed to accomplish this object. Furthermore, technical definitions are easily evaded by a nation which desires to go to war for selfish purposes. It, therefore, seemed best simply to make a broad declaration against war. This would make it more difficult rather than less difficult for an aggressor nation to prove its innocence. If there is a narrow, legalistic treaty definition as to the meaning of self defense or of aggression—and such a definition would be very difficult if not impossible to make in advance—the nation making war might well find justification through a technicality far easier than if it had to face a broad political examination by other signatories of a simple antiwar treaty in the light of world opinion. The mere claim of self defense is not going to justify a nation before the world. Furthermore, I do not believe that any tribunal can be set up to decide this question infallibly. To attempt to negotiate a treaty establishing such a tribunal would meet with endless difficulties and the opposition of many nations. I am certain that the United States and many countries would never have become parties to a treaty submitting for determination to a tribunal the question of the right of self defense; certainly not if the decision of the tribunal was to be followed by the application of sanctions or by military action to punish the offending state. I know there are men who believe in the lofty ideal of a world tribunal or superstate to decide when a nation has violated its agreement not to go to war, or by force to maintain peace and to punish the offender, but I do not believe that all the independent nations have yet arrived at the advanced stage of thought which will permit such a tribunal to be established. Shall we postpone world agreements not to go to war until some indefinite time when the peoples

of the world will have come to the conclusion that they can make a sovereign state subservient to an international tribunal of this kind? Shall we take no step at all until we can accomplish in one single act an entire revolution in the independence of sovereign nations? I have the greatest hope that in the advancement of our civilization all peoples will be trained in the thought and come to the belief that nations in their relations with each other should be governed by principles of law and that the decisions of arbitrators or judicial tribunals and the efforts of conciliation commissions should be relied upon in the settlement of international disputes rather than war. But this stage of human development must come by education, by experience, through treaties of arbitration and conciliation and solemn agreements not to resort to war. How many centuries have passed in the upward struggle of the human race to substitute government and law for force and internal conflicts in the adjustment of the rights of citizens as between each other? Is it too much to hope for the ultimate realization of this grand idea in the adjustment of international as well as personal relations, as a part of the great movement of world advancement? The last war certainly gave an impetus, and it is for this reason that I believe the time has come for united world denunciation of war.

Another question which has been raised in connection with the treaty was as to whether, if any country violated the treaty, the other parties would be released from any obligation as to the belligerent state. I have no doubt whatever of the general principle of law governing this question and therefore declined to place in the treaty a reservation to that effect. Recognition of this principle was, however, included in the preamble, which recites that the parties to the treaty are "Deeply sensible of their solemn duty to promote the welfare of mankind; persuaded that the time has come when a frank

renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated; convinced that all changes in their relations with one another should be sought only by pacific means and be the result of peaceful and orderly process and that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty."

What were the benefits to be furnished? An unconditional agreement not to go to war. This is the recognition of a general principle that if one nation violates the treaty, it is deprived of the benefits of this agreement and the other parties are therefore necessarily released from their obligations as to the belligerent state.

I have seen from time to time claims, on the one hand, that this treaty is weak because it does not provide the means for enforcing it either by military or other sanctions against the treaty-breaking state and, on the other hand, that through it the United States has become entangled in European affairs and, while under no express obligation, is under moral obligation to join other nations and enforce the treaty by military or other assistance. Neither of these positions is correct. I know that men will differ on the question of whether it is better to provide sanctions or military agreements to punish a violator of the treaty or military alliances to enforce it. But whatever the merits of this controversy may be, as I have already said, I do not believe the United States or many nations in the world would be willing to submit to any tribunal to decide the question of whether a nation had violated this treaty or irrevocably pledge themselves to military or other action to enforce it. My personal opinion is that such alliances have been futile in the past and will be in the future; that the carrying out of this treaty must rest on the solemn pledges and the honor

of nations; that if by this treaty all the nations solemnly pronounce against war as an institution for settling international disputes, the world will have taken a forward step, created a public opinion, marshaled the great moral forces of the world for its observance and entered into a sacred obligation which will make it far more difficult to plunge the world into another great conflict. In any event, it is not at all practical for the United States to enter into such an obligation.

It has also been said that the treaty entangles us in the affairs of Europe. I cannot understand why such an argument should be made. It no more entangles us in the political affairs of foreign countries than any other treaties which we have made and if, through any such fear, the United States cannot take any step toward the maintenance of world peace, it would be a sad commentary on our intelligence and patriotism. But, it is said, we are under moral obligations, though not under binding written obligations, to apply sanctions to punish a treaty-breaking state or to enforce its obligations. No one of the governments in any of the notes leading up to the signing of this treaty made any such claim, and there is not a word in the treaty or in the correspondence that intimates that there is such an obligation. I made it perfectly plain, whatever the other countries might think, that the United States could not join in any such undertaking. In the first speech I made on the subject, which was afterwards circulated to the nations, I said: "I cannot state too emphatically that it (the United States) will not become a party to any agreement which directly or indirectly, expressly or by implication, is a military alliance. The United States cannot obligate itself in advance to use its armed forces against any other nation of the world. It does not believe that the peace of the world or of Europe depends upon or can be assured by treaties of military alliance, the futility of which as guarantors is repeatedly demon-

strated in the pages of history." I believe that for this same reason Great Britain and some of the other nations of Europe rejected the treaty of mutual assistance. Whether the Locarno treaties will be construed as agreements to apply sanctions, I cannot say; but, whether they are or not, I do not believe that it is possible to enforce such a treaty. I know of no moral obligation to agree to apply sanctions or to punish a treaty-breaking state unless there is some promise to do so, and no one can claim that there is such a promise in this treaty. It is true that some of the press in Europe have indicated that the United States will now be under some moral obligation to do so, and these speculations have been echoed in the press of this country. But no government has made any such claim, and press speculations can certainly not be called a part of the treaty. There have been, of course, expressions of gratification on the part of European statesmen and journalists that the United States is again taking an interest in European affairs and is willing to aid in the furtherance and maintenance of peace. I, for one, believe the United States has always had a deep interest in the maintenance of peace all over the world. Why should not our government and our people feel a deep interest in this question? In modern times no great war can occur without seriously affecting every nation. Of course the United States is anxious for the peace, prosperity and happiness of the people of Europe as well as of the rest of the world. Because we did not approve of the Treaty of Versailles and the League of Nations in all respects, it has been assumed by some that we no longer take any interest in Europe and world affairs. I, for one, do not accept this as a just estimate of our national character and vision.

By some this grand conception of a world pledge for peace is considered visionary and idealistic. I do not think that all the statesmen of Europe and of the

world who have solemnly pledged their nations against the institution of war can be called visionary idealists. Idealists they are, of course. Idealists have led the world in all great accomplishments for the advancement of government, for the dissemination of learning and for the development of the arts and sciences which have marked the progress of this great growing age. Today probably more than at any time in recorded history, there is a longing for peace—that we may not again go through the horrors and devastation of a world war. I am sure that the people of this country are willing to try this last and greatest step, the solemn pledge of peoples and of nations. I cannot believe that such a declaration, entered into, not in the frenzy of public excitement but in the cool deliberation of peoples, can fail to have a world-wide moral effect. I believe that this treaty is approved by almost unanimous sentiment in the United States and in the world. Such approval means advancement in the ideals of government and of civilization. Of course, I know there are some who criticize it either as an attempt to accomplish too much or too little. Against these men I have no complaint. I have always been pleased to have the treaty discussed in all its phases with the greatest freedom, and I am willing to submit it to the matured judgment of all the world. I believe it is the bounden duty of the United States in every way possible, by its example, by treaties of arbitration and conciliation, and by solemn pledges against war, to do what it can to advance peace and thus to bring about realization of the highest civilization. When that time comes the maintenance of world peace will rest largely in your hands—you men and women here in the great audience before me, the many millions who, though absent, are following this meeting by means of the radio, and our brothers and sisters in the other countries of the world. France and the United States pointed out to other nations a hopeful pathway to world

peace. The other nations have gladly joined France and the United States and have agreed to follow that path with us. Whether or not we reach our common goal depends not so much upon governments as upon the peoples from whom their power flows. I believe in the people. I have confidence in mankind, and I am happy that I have been privileged to participate in the conclusion of a treaty which should make it easier for men and women to realize their long cherished ideal of peace on earth.

SELECTED ARTICLES

A HISTORICAL COMMENTARY¹

Seldom has so important an event in international politics had so little formal and documentary history behind it as in the case of the Pact of Paris, signed by the representatives of fifteen governments on August 27, 1928. . . It is possible to risk this statement without waiting for the archives of Governments to be opened to the historian because the negotiations were carried on not by the secret agencies of the old diplomacy but through an exchange of letters which were at once given to the whole world by the Governments concerned. The only part of this story which remains secret is the preliminary discussion within the cabinet offices, prior to the formulation of their diplomatic notes; and that preliminary discussion ceased to be of vital importance, except to the academic historian, once the note had been decided upon.

The documents contain a story of dramatic interest and lasting import. From a single sentence of M. Briand in an interview with an American newspaper reporter on the 6th of April, 1927, to the signing of a world-wide commitment binding all civilized nations never again to use war as the instrument of their policies, the path of achievement is marked out by only a few short documents; but these are milestones of a much longer journey and the external symbols of a much vaster movement in which nations, and not merely governments, participate. The triumph of the movement for international peace in our day depends not upon the will of any one or any group of statesmen, nor even

¹ By James T. Shotwell. *International Conciliation* no. 243.

upon the inspired utterances of the moral leaders of this generation; the will which directs this movement is that of the people of the civilized world who have learned the meaning of war through its useless and tragic devastation and who are intent upon the great experiment involved in eliminating from human affairs one of the oldest, if not the very oldest, of the instruments by which the rudimentary forms of organized society enforced their will and attained the aims of policy. We stand at one of the great turning points of human history; a turning point which may take generations, for in terms of history, time stretches out its long perspectives far beyond the mere incidents of documentary politics—but a turning point, nevertheless, for it involves a revaluation of the whole basis of international relations. To renounce war as an instrument of national policy means something more than the renunciation of actual war. It means the upbuilding of the structure of peace relationships in terms that will permit the steady growth instead of the atrophy of justice; it means the substitution of cooperative dealing for the ruthless competition which in the past has sought individual prosperity by the destruction of those who have sought to share a common good.

The old predatory world of conquest and violence is no longer an ideal of governments because it has ceased to be an ideal of nations. The Pact of Paris states this fact and so marks out the limits of an era in world history.

THE TREATY RESTS UPON PUBLIC OPINION

When the documents are so few as in this case, the student of history must read between the lines; or more definitely, between the documents. From April 6, when M. Briand made his initial statement, to June 20, when he submitted his formal draft of a treaty to the Amer-

ican Government, there were other things going on. The advocates of the "outlawry of war"—those who support the plan of Mr. Levinson and Senator Borah—were active not only in America but in Europe as well, and their efforts on behalf of the treaty continued with growing effect throughout the months that followed. For the first time since the peace problem has become a real issue in practical politics, all the peace forces in America united in support of a definite measure. But the most stirring and the most effective single voice in advocacy of the movement was that of Dr. Nicholas Murray Butler, who first called the attention of the American people to the extraordinary offer of the government of France and who found the way, time and again, to keep alive an offer which the government at Washington long hesitated to accept. It is impossible here to review all of the efforts on the part of private citizens which finally resulted in government action, but the fact remains that the official offer of a formal text—the text which finally became the Pact of Paris—made on June 20, 1927, was only answered by the Washington administration after Senator Capper and others had proposed that Congress itself by joint resolution take up the offer and declare American policy to be in accord with it.

The rising tide of public opinion which this resolution, and others similar to it, indicated is directly responsible for the further negotiations which led to the Pact of Paris. It has been claimed that the six months interval during which Washington delayed its reply to France was due to a keen-sighted detection of designs upon the part of France to make us a blind ally in its European adventures. If this objection had been a real one it could easily have been met by the same device which has now been employed to make the multilateral treaty possible, namely, by providing for the recovery of "liberty of action" in case another signatory

goes to war. M. Briand is not so naif as to propose impossibilities in diplomacy, and he knew as well as anyone in America that no foreign government, not even that of France, could tie the hands of the American people in case it chose the path of imperialist adventure and imperilled the peace of the world in doing so. M. Briand's offer was for a treaty with the United States alone, and he was prepared to sign with us without limitations or qualifications because it would be simply the formal endorsement of an existing situation. In the mind of the French statesman, there was no possibility of war between ourselves and France; but there remain danger zones where peace is not secure unless the engagement leads farther than a mere statement of moral purpose. M. Briand's original offer was a simple one which did not involve the menaced territories of Europe. When these were added to the text, he voiced the opinion of every element that makes for peace on the continent of Europe when he stated that the League of Nations and the Treaties of Locarno contained binding obligations that go much farther than this general treaty to safeguard and preserve the peace which it declares, and that the new antiwar pact must not imperil the existing structure. With the utmost frankness, M. Briand stated this fact to the American Government when it proposed that all nations should come into the pact instead of merely limiting it to France and the United States. But it would be misreading history and falsifying our conception of M. Briand's part in it to attribute to him unworthy motives of clever diplomacy in his first offer of a bilateral agreement, as though it were involving the United States in a disguised alliance.

It was not only in the United States but in France and Great Britain as well, and also in Germany, that public opinion showed itself in advance of the action of governments. The impatience of the British press over the slow decisions of the Foreign Office which

delayed a month and more before replying, found expression in all but the most conservative press, as well as in the liberal and labor newspapers. On the continent and in Japan, public opinion played a similar rôle. In the case of Japan this was of peculiar significance, as matters so vital as these had previously been left in the hands of the elder statesmen, and the discussion of them subdued to the dominant note of authority.

The conclusion to be drawn from this short page of history is that the World war has, after all, taught its full lesson to the generation that has suffered from it. The will to peace is paramount in the civilized world; and it is in this fact that the strength of the Pact of Paris resides.

WHAT THE TREATY INVOLVES

But just what is involved in the treaty itself? More especially, what are the commitments of the United States under it? Does our acceptance of it imply that we are moving away from our policy of isolation? Does it tie us up with Europe and its post-war arrangements, as some politicians have claimed? Or, on the other hand, does it achieve its main ideal while reserving for us all necessary freedom of action in other ways? For the answer to these questions, one would naturally look into the text of the treaty itself. But here we come upon a peculiarity of the Kellogg drafting. In spite of all demands for clarification or further definition, the two short articles of the treaty have been left in the very simple terms in which they were originally stated by M. Briand in his offer of June, 1927. M. Briand, therefore, is the author of the text as it stands.

Article 1 provides that these nations "condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy." Article 2 states that all disputes of every kind shall

be settled by "pacific means." The pacific means are not specified, and there are no further details in the treaty itself.

With the exception of Germany, every Government which replied to Mr. Kellogg asked for further definition of this great act of renouncement, and Germany added its own interpretation as to defense and the relation of the Pact to the Covenant. Mr. Kellogg has attempted to meet these requests by the argument of his accompanying letter and by a phrase in the preamble of the proposed text. In the letter, quoting a previous statement by him, made to the American Society of International Law, he admits the "inalienable right" of self defense and claims that the draft treaty would in no wise interfere with the police duty (he does not use this term) of guaranteeing peace under the League Covenant, the Locarno Treaties or even under the treaties of neutrality to which France called attention.

The British had raised an additional point as to their liberty of action to defend their vital interests in certain parts of the world that are not British territory. They had as well called attention to our possible difficulties in applying this sweeping reform to our relations with Central and South America, having in mind both the Monroe Doctrine and intervention. Mr. Kellogg does not reply to this reference in the British note, and the inference is that it is covered by the doctrine of defense.

The only concession which he makes to the various comments of the governments is a single phrase in the preamble of the draft treaty. The important phrase is this: "That any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty."

The Secretary of State has interpreted this phrase to mean simply that in case a signatory violates the treaty, the other signatories recover their liberty of

action with reference to it. There is in addition, a moral duty expressed or implied in this phrase, that the signatories to the treaty do not become a silent partner of an aggressor; but no formal obligation is entered into to put down the aggression.

As the expression of a moral principle it can hardly be questioned. It merely states that the case would call for "a denial of the benefits" of peace to the violator. The fact that this is in the preamble and not in the body of the text gives it still further the appearance of a statement of underlying principle rather than a binding obligation. Nevertheless, the administration that rejected the Covenant has now admitted its major premises.

We are inclined to accept the view, almost universally held outside the United States, that the principle involved in this single phrase is at least equal in importance with that in the heart of the treaty. For the structure of peace is one that involves more than a mere denunciation of war; it involves as well a guaranty that those who make themselves defenseless in the name of this great ideal shall not be left the victims of aggressive power.

Peace comes in the first instance by the renunciation of violence; but security for the weak—which is the solid and enduring basis of peace—lies in international cooperation. The international anarchy of the present day would continue to breed wars, in spite of verbal promises, if the greatest of all the nations were to place its resources freely at the disposal of an aggressor.

At the close of the World war, the United States proposed to deny itself this privilege of anarchy by membership in the League of Nations. It now once more is brought back to the same unescapable issue. Is it to be and to remain the potential accomplice of peace-breaking nations and so to cast its weight against the security of those who build their hopes of peace upon

the growing structure of an international community? Or is it to give the world to understand that when war breaks out and the community of nations is threatened by aggression it will be on the side of international law and international honor? In the preamble to the treaty, we have the second answer of the United States to the question persistently addressed to it by the whole civilized world. We recognize that it would at least be our moral obligation to deny the benefits of a renunciation of war to the violating state.

SUPPORT FOR THE LEAGUE WITHOUT INVOLVEMENT IN IT

But, now after ten years, the question comes back to us in different form. American public opinion, which held back from assuming the obligations of League membership, is nevertheless ready to recognize the value of the Covenant and of the Treaties of Locarno as safeguards of peace where those safeguards are most needed. It is also beginning to see that the attempt to maintain a position of absolute aloofness with reference to the League is hardly consonant with its friendly attitude, if by aloofness is meant complete freedom of action with reference to the peace activities of League members. The simple fact is that there is no possibility of absolute aloofness, for the power and influence of the United States enter into all the calculations of other nations with reference to policies of peace and war. Suppose, for instance, that a violation of the Covenant or of the Treaties of Locarno were actually to take place; those nations which would be called upon to suppress the violator might, and most likely would, find themselves at once in a position of extreme difficulty with reference to the United States. For, as a neutral power, it would be within our right to insist upon the freedom of shipment to belligerents of privately owned supplies, and this, under the chaotic conditions of sea

law which have prevailed since the opening of the World war, would tend to make us, if we insisted upon our "rights," an accomplice of the aggressor. The situation has become an impossible one. Even the fear that we might take this line of action has been the chief anxiety of those who are building up the structure of a guaranteed world peace. The present treaty does not definitely meet these doubts by any formal legal obligation in the treaty itself, but the statement in the preamble is noted—and not always accurately—in the letters of acceptance.

As this is the only part of the treaty which by a stretch of the imagination can be said to involve the United States in the maintenance of the League or "the Versailles settlement," it should be clear at once that there is nothing whatever in the charge. There is merely a presumption that the United States will not be found aiding the aggressor. The preamble states a moral obligation and nothing more. The verb is "should," not "shall." Nevertheless, this statement of the motives which would guide our policy in the hour of crisis has been sufficient to reassure the other signatories that they will find the moral influence of the United States supporting the cause of peace even when this country is not directly involved.

The support of peace, however, does not necessarily mean participation in its enforcement. We may deny a belligerent access to our resources and so partially curb its designs without necessarily entering the lists of war ourselves against it. This proposal of a negative instead of a positive sanction was in the plan of the American committee which in 1924 furnished some suggestions embodied in the Geneva Protocol. The protocol itself, however, definitely and emphatically rejected this particular idea and put all emphasis upon the obligations of joint action against the aggressor. The originator of the suggestion in the plan of the American

committee was David Hunter Miller. It was rejected in Geneva because the continental states felt the need of a more definite obligation to maintain the peace, an obligation which Locarno has since provided for the continental powers. But the British Empire as a whole has not been a member of the Locarno pact, the Dominions holding back from participation in the policing of Europe, much like the United States itself. The formula of 1924 left the aggressor state uncertain what action would be taken against it and decreased by that much the risk of its aggression. The same conception is once more before us in different wording in the preamble of the Kellogg treaty, which similarly deprives the violator of the right to calculate upon even the benevolent neutrality of the other signatories.

War is no longer the free prerogative of sovereign states. That is the great meaning of this treaty. But for the United States, it is almost equally important to discover that this renunciation of war can be made without an increase of our involvement in Europe.

NOT ALL WAR RENOUNCED

Turning now to the text of the treaty itself, what is the obligation which it imposes? It lies in the declaration that the signatories "renounce war as an instrument of national policy." This should almost be written with hyphens throughout. Every word in it is of importance. In the first place, what is proposed is "renunciation," not "outlawry" of war. Outlawry would call for a whole new set of provisions which lie entirely beyond the scope of the present treaty. Renunciation, on the other hand, as set forth in this treaty, is a simple act by which each sovereign state declares for itself the conditions of its own exercise of power. A comparison of the simple terms in this present treaty with either Mr. Borah's resolution for the outlawry of war or the plan

as set forth in Dr. Morrison's book will show how very distinct are the two propositions of renunciation and outlawry. Indeed, it is chiefly because the present treaty is not outlawry that it is able to avoid the involvement of the United States in the maintenance and guaranty of peace throughout the world. It escapes from this dilemma by limiting its proposal to something much less than the high politics of a world scheme for outlawry; for outlawry implies an act of power directed against the law-breaker—either police action or court pronouncement—and there is nothing of this in the Pact of Paris. The renunciation of war as an instrument of our own policy does not in itself call upon us to exercise any such suppression of others. Indeed, the present treaty takes pains to avoid just this commitment.

The rest of the important phrase has been up for criticism by those that claim that war has not been used as an instrument of policy, writing in ignorance alike of history, jurisprudence and the literature of military strategy. War has been an instrument of policy throughout the history of politics. Nowhere is this more clearly set forth than in the works of that supreme instructor in military science, Clausewitz, who devoted a whole section (Book viii Chapter 6) of his great work, *On War*, to the consideration of "War as an Instrument of Policy."

Perhaps the most important word, however, in this phrase, "the renunciation of war as an instrument of national policy," is the word "national." Not all war is renounced, even as an instrument of policy. Only that kind of war is renounced which is, as M. Briand put it, the spontaneous and willful assertion of a nation's purpose. This leaves untouched the collective action of the guarantors of peace under the Covenant or the Treaty of Locarno, for if they are called upon to use force against a violating nation, it is not as an instrument of their national policy but as the instrument of the community of nations, concerning which no single

word is to be found in this whole treaty. Action under the League, therefore, is left entirely free, and the long discussion which has taken place on this point was more or less beside the mark.

As a matter of fact, the enforcement of peace under the terms of the League Covenant is in the nature of defensive war. It is "cooperative defense," both in theory and in fact. The theory is set forth in Article xi of the Covenant, and the practice enjoined in Article xvi. It is cooperation in the truest sense of the word because there is no super-state which can command the members of the League. Action is taken only by the free will of each participating government. The defense of the community of nations is in the hands of its free but responsible members. Such being the theory of the "sanctions" of the League, this treaty neither controverts it nor so much as touches upon it. The Canadian government pointed this out in unanswerable terms in its first reply.

THE SIGNIFICANCE OF THE PACT IN TERMS OF HISTORY

The peace problem should be reconsidered now in the light of practical politics; it is no longer a mere chapter of idealism. But when we face it on these terms, we realize how vast a change is called for in the proposal to rid the world of war. It is to destroy the oldest political institution we have, older than the nations which propose its abolition, older than all nations and all governments. History once had little else to record and has no other theme so constantly recurring throughout its annals. At almost every great crisis in human affairs, the Gordian knot has been cut by the sword.

Most of our liberties have been gained by war, most of our institutions have at one time or another been safeguarded by it; the national state itself, that greatest

of all political creations, has been won by war, safeguarded by it and in turn has used it for the attainment of its purposes throughout the world.

For the nations now "to renounce war as an instrument of national policy" is indeed a revolutionary proposition which cuts deeper to the roots of political history than any other that could be made, with a possible exception of the renunciation of sovereignty itself.

We in this country have not fully envisaged the significance of the proposal until now, because those phases of history in which war has played the major part are not so evident to our eyes as they are to those nations which are more closely in contact with the continuing processes in which nations are created and their purposes fulfilled. Our historic task, at least our chief one, has been the conquest of a continent, and although we speak of this in terms of militant achievement, the conquest after all has been in the realm of industry and economics rather than of the forcible displacement of other nations in our path. The Indian was not using his vast heritage and his displacement was only a preliminary skirmish to the great advance which conquered the forest and the prairie with the implements of peace.

We, therefore, do not fully appreciate the continuing emphasis upon this age-long implement of war, which other nations continued to employ because they have had to, or at least because they have known no other way to secure their rights in the conflicting current of nationalities. We, too, had to use the sword on more than one occasion, chiefly for the settlement of our own internal problems. But the great trend of American history is that which has to do with the day's work rather than with those relatively few disturbing elements which, while they have taught us what war is, have nevertheless left us free from its constant threat.

This glance at American history and its contrast to most of that of other nations furnishes the first clue

to the understanding of the present proposal, as indeed it supplies the clue to the still greater proposals that will be forever associated with the name of Wilson.

We have the advantage of a perspective far enough removed from the phenomenon of war to see it less disturbed by the immediate preoccupations of statesmanship than is possible in Europe. But this clarity of vision as to the ultimate end to be achieved is gained at a cost of practical knowledge or even concern as to the immediate effects which such a reform would cause in the existing state system of the civilized world.

Therefore, before we turn to see whether or not the present proposal will achieve all that is claimed for it by its proponents, we should pause a moment to see just what it would mean for the nations of today to renounce the most potent, as well as the most dangerous, of all their instruments of policy. Suppose the reform were really true, what then?

The first point is that some means must be found to do what war has done in the past. Whatever the idealist may think, and in spite of its brutality and of its tragedy, war has been used legitimately, and it is this legitimate use of war which must be in our minds when we propose its discontinuance.

Without going into too detailed a historical analysis, we may say that its two chief services have been to right or redress, and to put down the violence of tyranny and anarchy on the one hand; and also to enable the forces of civilization to make headway against the human barriers that intrench themselves to impede its progress. In short, war has been waged against injustices that could not otherwise be rooted out, and to prevent a static world with injustice consecrated in it.

The question now is would the elimination of war leave these injustices intact and would it deprive civilization of an essential instrument in securing the possibility of change? Would the renunciation of war by civilized

nations mean, let us say, an eternity of the conditions imposed upon Europe by the Treaty of Versailles—or by any other treaty at the close of any other war? If so, let us frankly say that war will remain with us and the renunciation of it will be a hollow farce.

Now, the true meaning of the present movement to renounce war—and in this we include as parts of one great whole the foundation of the League of Nations, the erection of the World Court, the experiments in arbitration, conciliation, international conference, as well as the proposed multilateral treaty—lies in the fact that modern civilization has reached a turning point in which this ancient instrument is no longer valid, even for what was formerly its legitimate ends. This was the great lesson of the World war, a lesson which those who fought it must have learned even more effectively than we who were hardly touched by it.

It is not merely that its major aims were unachieved, that a war begun to safeguard a Hapsburg monarchy brought its dissolution; but that it revealed the fact that national states could not pursue their purposes in war without so deeply disturbing the whole complex state system of the civilized world as to be no longer calculable in its effects or even in its direction.

It was by no mere chance that the whole world was involved in an European war; it was because the frontiers of nations no longer run along their boundaries. The world of modern industry and finance has become and is daily becoming an interlocking of common interests. With the possible exception of our own, there is no nation standing which is self-dependent and self-contained, if in it the processes of modern science are at work in the development of those resources upon which the comfort and happiness of the peoples of the world today depend.

No responsible statesman, therefore, can plan to use war "as an instrument of national policy" when that

instrument is bound to escape his control in the hour of crisis, even if it were merely by making the belligerent state tributary to the non-belligerents through the need for supplies and the invisible arms of finance.

This was not the case in the simple days of agricultural life, when a few men fought on distant battlefields and war was waged by man power. Then neutrality was possible and wars could be localized, and that is still the case where nations have not fully entered into the scientific era. In the last analysis, it is science which has brought us peace, or at least the possibilities of peace, by making war no longer a pertinent controllable instrument.

But what is the alternative? What are the specific means which are to be used to secure all changes in the relations of one nation with another? The institutions which are to take the place of war are mentioned above—the most important being the League of Nations—and it will ultimately be found that all the formal plans for renouncing war will have to admit a major rôle for this one great established instrument of peace. But this is not the subject of debate today.

Quite apart from the working of any international institution, there are means for insuring a nation's rights without resort to war. Diplomacy no longer needs the weight of armaments to force acceptance of its arguments; a weighted purse and the confidence of a world of credit are likely to prove more powerful than the rattling of the sword because of the growing power of economic facts in international relations.

Strength in the nations of today no longer lies in great battalions nor even in great navies, but in the capacity to maintain these, a capacity which is the genuine peace-time strength of nations. There is no need to fear a static world where these forces are at work, for they are the forces of change itself. The creation of a Franco-German steel trust is more likely to trans-

form the Rhine frontier and with it the history of Europe than any threat of war. These are new facts. They are only just beginning to show their power.

THE ANTIWAR PACT²

WHAT WARS ARE ACTUALLY PROHIBITED?

Article I of the pact states that:

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

As a result of interpretative notes, the leading parties to the pact have made it clear that this renunciation does not apply to war in the following cases:

1. In self defense.
2. Against any state which breaks the treaty.
3. In execution of obligations under the League Covenant.
4. In execution of obligations under the Locarno agreements.
5. In execution of obligations under treaties guaranteeing neutrality, which presumably include the French alliances.

Such is the list of wars which the pact does not prohibit. Some critics state that they are so wide as to make the pact of little value. Professor Edwin M. Borchard has stated:

Considering these reservations, it would be difficult to conceive of any wars that nations have fought within the past century, or are likely to fight in the future, that cannot be accommodated under these exceptions. Far from constituting an outlawry of war, they constitute the most solemn sanction of specific wars that has ever been given to the world.

It may be argued, however, that instead of sanctioning the excepted wars, the antiwar treaty leaves these wars in exactly the same status as they were before the pact

² *Foreign Policy Association Information Service*. November 9, 1928.

was signed—no more and no less legal. The actual range of the above exceptions can be determined only after an analysis of the circumstances under which these exceptions become effective.

The Right of Self Defense

While the pacifists have long argued against the use of any force in international relations, no state has agreed to give up the right of self defense, and it is difficult to conceive of any state so doing. The authors of the "outlawry of war" movement in the United States did not propose to abolish the right of self defense.

Cooperative Defense

The sanctions under the Covenant, the Locarno agreement and the French alliances seemed to be based upon this same principle of self defense. The sanctions do not constitute a primary right to go to war. They may be invoked only on behalf of a state which is illegally attacked and which is acting in the name of self defense. If, for example, the territory of state A is invaded by state B, state A may, subject to the provisions of the Covenant, resist the invading army as an act of self defense. It may also receive aid from the parties of the Covenant, of Locarno and of the French alliances, provided state A is a party to these agreements. In other words, when force is employed under these agreements it is in the nature of cooperative defense.

President Coolidge has insisted that despite the anti-war pact an adequate army and navy is still necessary for the self defense of the United States. In other words good faith is not an adequate guaranty.

If it is legitimate for one state to maintain forces to defend itself, is it illegitimate for states jointly to maintain forces for cooperative defense? Without such sanctions it is argued that the reduction of armaments by each state is impossible. Without such sanctions small

states, unable to maintain large armaments, may live under the fear of attack by well-armed powers.

Self Defense in Private Law

While the principle of self defense and of cooperative defense may be perfectly valid, the application of the principle presents difficulties.

In private law, the conception of self defense has existed for a long time. In the United States force is justifiable in repelling an assault in proportion to the immediate necessity, but force in excess of necessity is inexcusable. The defender must not become the aggressor. This is a question of fact for the jury to decide.

Under French criminal law self defense (*défense légitime*) is justified in repelling one who attempts to enter the house of the defender during the night, or in protecting oneself against another who is committing robbery or pillage "with violence." This provision does not define the measure of force which is justifiable. It seems correct to state that, because of the nature of the phrase, self defense has not been defined in private law but that it exists as a general principle and is applied by the courts to a particular state of facts as they arise.

Self Defense and International Law

Under international law, the term self defense has often been given a wider meaning than in private law. And what is of even more importance, each state has decided for itself when the application of the doctrine is justified; there has been no international jury or tribunal to decide the limits of the doctrine.

General von Moltke, Chief of the German General Staff, and the military party in Germany believed in fighting wars of defensive aggression or "preventive wars." The enemy should be attacked before he can attack.

The same view of self defense was stated by Chancellor von Bethmann-Hollweg before the Reichstag at the outbreak of the World war when he asked, "Were we to wait until the powers between whom we are sandwiched chose their time to strike?" The Reichstag and the German people originally believed that in this contest they were fighting a war of self defense to forestall the "encirclement" policy of the Allies.

The European system of alliances has been generally regarded as instrumental in causing the World war. Yet these alliances were "defensive" in nature. The preamble to the military convention of 1892 between France and Russia declared that both states had "no other object than to meet the necessities of a defensive war, provoked by an attack of the forces of the Triple Alliance." The Triple Alliance of 1882 between Austria-Hungary, Germany and Italy was declared to have an "essentially conservative and defensive nature." Competition in armaments may likewise be carried on in the name of "self defense."

AGGRESSIVE "SELF DEFENSE"

Moreover, as the origin of the Franco-German war of 1870 shows, it is possible for a state, acting technically in self defense, to engage upon a war to achieve aggressive ends. The occasion for this war was the succession of a Prussian prince to the Spanish throne, which the French Government vigorously opposed. Bismarck, who for various reasons had desired a war with France, brought the dispute to a head on July 13, 1870 by editing the famous Ems dispatch to the effect that, in view of the French demands, the Prussian Emperor had virtually told the French Ambassador, Beneditti, to leave the country. This was a misrepresentation of the situation. Coming at the end of a period of tension, the Ems dispatch aroused an emotion in France which made conciliation impossible and which led the French Government

on July 17 to declare war. French troops thereupon moved across the Rhine and took Saarbrücken. The German army, under Moltke, soon administered an overwhelming defeat to France, and Germany imposed a peace treaty which deprived France of Alsace-Lorraine and imposed an indemnity of five billion francs. Such was the result of a war in which France had been technically the "aggressor" and Germany had acted in "self defense."

The question of whether or not facts warranted the application of the doctrine of self defense arose in the *Caroline* affair. During a rebellion in Canada in 1837, armed men from across the Canadian border attacked, upon American territory, the *Caroline*—a vessel belonging to Canadian insurgents. The subject became a matter of correspondence between the two governments, in which Lord Palmerston assumed responsibility for the destruction of the *Caroline*, as a public act of force, in self defense. Mr. Webster, American Secretary of State, admitted the existence of the "great law of self defense," but said the necessity should be "instant, overwhelming and leaving no choice of means and no moment for deliberation."

Although no agreement upon this point was reached, discussion was dropped in view of the fact that the British Government apologized for entering American territory. Unlike the cases discussed above the *Caroline* case involved measures of force taken by Great Britain against individuals on American soil. These measures were not directed against the American Government. Nevertheless, had the United States and Great Britain been on unfriendly terms, the dispute over the meaning of "self defense" in this case might have led to war.

The United States upon several occasions has invoked the doctrine of self defense to invade foreign territory. In 1814 Major-General Jackson marched into West Florida, then a possession of Spain, during the war be-

tween the United States and Great Britain. In justification of this conduct, it was declared that the Seminole Indians in West Florida had been plotting against the United States. On November 28, 1818 Secretary of State Adams defended the occupation of Spanish territory "as a necessary measure of self defense. . ."

In 1836 the United States defended the pursuit on Mexican territory of bands of Indians "upon the immutable principles of self defense—upon the principles which justify decisive measures of precaution to prevent irreparable evil to our own or to a neighboring people."

The doctrines advanced by the United States in the case of the *Caroline*, the Seminole Indians, etc., apply to instances where the offenders have been individuals located upon foreign territory. These doctrines might not necessarily apply, therefore, between states.

SELF DEFENSE AND THE MONROE DOCTRINE

It has been agreed that the antiwar pact does not prevent the signatories from going to war in self defense and that each state decides for itself "whether circumstances require recourse to war in self defense." Several definitions of this doctrine have recently been advanced in connection with the antiwar negotiations. Thus the British Government declared that the protection of certain regions constituted for the British "a measure of self defense." The United States did not mention the Monroe Doctrine during the course of the negotiations; nevertheless, the question is frequently asked, what effect will the pact have upon this doctrine and its enforcement? It has been suggested that the United States will regard the use of force under the Monroe Doctrine as an act of self defense.

The use of force by the United States under the Monroe Doctrine is conceivable under at least three circumstances:

(1) To repel the military invasion of a Latin American state by a non-American power.

(2) To intervene in Latin American countries where disorder threatens foreign interests.

(3) To prevent the execution of agreements between Latin American and non-American powers providing for the establishment of naval bases, etc., which in the opinion of the United States might endanger its security.

If, under the antiwar pact, state X should invade a Latin American state, and assuming that both states were parties to the antiwar pact, the United States would recover its freedom under the pact with reference to state X. There would be no conflict between the treaty and this aspect of the Monroe Doctrine. The same consideration would apply to the execution of the treaty of November 3, 1903 between the United States and Panama. In this treaty the United States "guarantees and will maintain the independence of the Republic of Panama." It may be argued that the obligations of the United States vis-à-vis Panama under this treaty are similar to the obligations of other states under the Covenant and the Locarno agreement. In case Panama is attacked, the United States, under this treaty, would presumably be obliged to lend it military support. If both Panama and the attacking power are parties to the antiwar pact, the United States would be free to act with respect to the attacking power which had thus violated the antiwar pact. If Panama should not become a party to the pact, the United States would apparently have to justify the use of force against a signatory to the pact in behalf of Panama, on the ground of self defense; *i.e.*, of defending the Panama Canal Zone. The United States holds this zone under perpetual lease and for the purpose of the treaty it would probably be regarded as part of the territory of the United States.

But will the pact prevent the United States from continuing its policy of military intervention in Central

American countries? The United States delegation at Havana vigorously opposed a non-intervention resolution at the time when the United States was carrying on its antiwar negotiations. The government of the United States has frequently carried on military operations without any direct authorization of Congress, although that body under the Constitution has the power to declare war. Moreover, a number of governments have landed marines or other troops in disorderly countries for the purpose of protecting foreign interests without regarding such an act as necessarily creating a state of war.

It may be argued, therefore, that the antiwar pact does not affect the right of temporary intervention by the United States or other powers. Nevertheless if the antiwar pact does not prohibit the United States from intervening in Latin America, it does not prevent European governments from doing so for the same reason. The question therefore arises, how may the United States, under the antiwar pact, forcibly prevent European intervention in Latin America, unless it justifies the use of force for this purpose on the ground of self defense?

Any such definition of self defense has been regarded with wide misgivings. It has been argued that the solution of the difficulty is in placing all intervention under some form of international control which will prevent the abuse of intervention for the ends of a single power.

Will the pact prevent the United States from using force to prevent a Latin American state from granting naval bases, etc., to a non-American power? Hitherto any such agreement has been regarded as a danger to the security of the United States, and it is possible to argue that any preventive acts to forestall such a danger would be "self defense" within the meaning of the pact. Nevertheless, if all the parties to the pact should support this doctrine of "preventive" wars,

it is difficult to conceive of any war which the pact actually prohibits. In considering the necessity of adopting a reservation to this effect, the question should be asked whether the fear of such agreements is of more than theoretical importance; and also whether or not the danger, if it exists, cannot be guarded against by other means. At the Washington Conference the British, American and Japanese Governments signed an agreement providing for the *status quo* in regard to naval bases in the Pacific. A similar agreement might be negotiated among the various American governments.

PROTEST AGAINST THE BRITISH DOCTRINE

It would seem possible to give the term "self defense" perhaps as many divergent interpretations as the term "aggressive war." Moreover, the policy which one state defends on the ground of "self defense" may be criticized by another state on the ground of "aggression," or "imperialism." Thus in its note of August 31, 1928 the Soviet Government criticized the so-called British Monroe Doctrine. It stated that the recognition of the British claim "might be an example for other nations to follow." The probable result would be that there would not be a single spot in the world where the terms of the pact were applicable. The Soviet Government could not "but regard this reservation as an attempt to use the pact itself as an instrument of imperialistic policy."

Likewise the president of the Wafd, the Egyptian Nationalist party, and the presidents of the Egyptian Senate and Chamber protested against the British reservation. The first declared that the peace of the world could not be assured if such a reservation could cover "imperialistic enterprises having no other justification than force." In signifying its intention to adhere to the pact on September 4, the Egyptian Government

stated that such adherence was not to be considered as "implying any admission of any reserve whatever made in connection with the pact."

In its note of October 4, 1928 in regard to the pact, the Persian Government also declared that "the reservations made by certain powers," cannot under any circumstances or at any time create on the part of Persia any obligations whatsoever to recognize anything possibly susceptible of contravening its territorial and maritime rights and possessions.

On October 31, 1928 the Turkish Government sent a declaration to the United States adhering to the antiwar pact, "subject to the ratification of its action by the Grand National Assembly." In a note the Turkish Government declared, in part:

Believing that the treaties of neutrality concluded between Turkey and other states are in harmony in spirit and in letter with the aim and significance of the treaty . . . Turkey agrees to sign the pact without reservations . . . and considers itself reciprocally bound by the text of the proposed act exclusive of all the documents which have not been submitted as an integral part of the pact to the collective signature of the participating states.

This last sentence is an apparent reference to the British reservation in regard to "special interests," since in the note quoted above Turkey agrees to the "explanations" given in the American note of June 23.

Thus Egypt, Persia and Turkey have made reservations in regard to the British Monroe Doctrine. Afghanistan has not yet replied, but within recent years it has usually acted in agreement with its neighbors. Russia has also protested, as we have seen, against the British reservation.

DANGERS OF ABUSE

Fears have been expressed also lest the United States shall attempt to justify acts of force under the Monroe Doctrine on the ground of self defense. Senator

Molinari, an official spokesman for the incoming government, recently stated in the Argentine Senate: "As long as there are North American soldiers in Nicaragua no one can use the words employed by Secretary Kellogg." A number of states in Latin America, led by Argentina, Brazil and Chile, had failed to adhere to the pact by November 1, 1928; and the press reported that this delay was due to their uncertainty that the United States Senate would make a reservation stating that the pact did not affect the use of force by the United States under the Monroe Doctrine.

There are at least two ways by which the discretion of individual states in this respect may be narrowed and disputes over the meaning of self defense removed. One is by the adoption of an interpretation of the term self defense, restricting it to repelling the actual invasion of territory. Such an interpretation might take the form of a protocol annexed to the treaty. It is doubtful, however, if in view of the wide interpretation of "self defense" employed in the past any important state would accept such a limited definition. Whatever the definition may be, any attempt to define the meaning of "self defense" is likely to be as unsuccessful in international law as it has been in private law.

A second method of preventing the abuse of the doctrines of self defense and cooperative defense is by establishing some international means of determining in a particular case whether or not a nation is justified or would be justified in acting in self defense. Mr. Kellogg hinted at some such possibility when he stated before the Society of International Law that if a state has "a good case" in invoking the doctrine of self defense, "the world will applaud and not condemn its action."

THE LEAGUE AND SELF DEFENSE

The fact should be emphasized that international means for this purpose already exist in the case of a

vast majority of the states which have signed or adhered to the antiwar pact. A member of the League of Nations cannot legally go to war simply by invoking the doctrine of self defense. All disputes in which members of the League are involved must be submitted, as we have seen, to some form of arbitration or conciliation; and any resort to war without first invoking this procedure, except possibly to repel actual invasion, is a violation of the Covenant. This fact was clearly illustrated in the Graeco-Bulgarian frontier incident of 1925. On October 22 the Bulgarian Minister of Foreign Affairs telegraphed the Secretary-General of the League that a Greek soldier had crossed the frontier and fired on a Bulgarian sentry. The Bulgarian sentry replied and killed the Greek, who fell in Bulgarian territory. General firing resulted and the Greek Government ordered troops to advance into Bulgarian territory. Bulgaria telegraphed the League of Nations, asking that in virtue of Articles 10 and 11 of the Covenant the Council be convened "without delay to take the necessary steps." The telegram closed by saying, "Convinced that the Council will do its duty, the Bulgarian Government is maintaining its order to Bulgarian troops not to resist the invaders of its territory."

The next day, M. Briand, Acting President of the Council, telegraphed both the Greek and Bulgarian Governments, reminding them of their obligations "under Article 12 of the Covenant not to resort to war and of grave consequences which Covenant lays down for breaches thereof." He "exhorted" the two governments to retire their troops behind their respective frontiers.

In reply, Greece insisted that Bulgaria had misstated the facts; that the firing was opened by Bulgarians. "The sudden and unprovoked character of the Bulgarian aggression is obvious." Consequently the Greek Government had been obliged "to take all measures considered necessary for the defense and, if necessary,

the clearance of its national territory." The measures Greece had taken "are nothing but measures of legitimate defense and could not be considered as hostile acts likely to lead to a rupture. . ." The League Council met on October 26 at Paris, and representatives of Greece and Bulgaria were present. The President read a statement setting forth the conflict in facts. The Council passed a resolution requesting Greece and Bulgaria to withdraw their troops behind the respective frontiers within sixty hours. Both Governments accepted this "invitation" and military attachés of France, Great Britain and Italy later reported that this withdrawal had actually taken place.

The Council next proceeded to determine the facts and assess the responsibilities. The Bulgarian representative declared that Greece had been guilty of "aggression." The Greek representative declared that Greece had acted in "legitimate defense."

M. Briand, Acting President of the League Council, commenting on the fact that Greek troops had actually entered Bulgarian territory, stated, according to the Council minutes, that he had

understood the representative of Greece to indicate that all these incidents would not have arisen if his country had not been called upon to take rapid steps for its legitimate defense and protection. It was essential that such ideas should not take root in the minds of nations which were members of the League and become a kind of jurisprudence, for it would be extremely dangerous. Under the pretext of legitimate defense, disputes might arise which, though limited in extent, were extremely unfortunate owing to the damage they entailed. These disputes, once they had broken out, might assume such proportions that the government, which started them under a feeling of legitimate defense, would be no longer able to control them.

The League of Nations, through its Council, and through all the methods of conciliation which were at its disposal, offered the nations a means of avoiding such deplorable events. The nations had only to appeal to the Council. . .

The Council now appointed a commission of representatives of France, Italy, Sweden and the

Netherlands, headed by Sir Horace Rumbold, to travel to the scene of the incident and learn what actually occurred. Both Bulgaria and Greece agreed to accept its decisions. Following an exhaustive inquiry the Rumbold commission reported to the Council. The commission declared that the information upon which the Greek Government had acted had been false or exaggerated—"news which was forwarded unverified by subordinates and distorted by some of them—and was rather too readily accepted by the Greek General Staff." The Greek Government which had acted without premeditation had believed that invasion was imminent but its belief was founded upon incorrect information.

The League Council declared that

the local and central authorities were entitled to take within the Greek frontier all military measures which they considered the security of the country necessitated; but the Greek Government should not have caused its armed forces to cross the Bulgarian frontier.

Greece had violated Bulgarian territory without sufficient cause and therefore reparation was due for the damage which resulted. The commission recommended that Greece pay an indemnity of 30,000,000 levas to Bulgaria in reparation for this loss of Bulgarian life and property, deduction having been made for the initial murder of the Greek soldier.

But the commission did not stop here. It inquired into the fundamental political situation which had given rise to the dispute. It recommended that neutral officers be appointed to take control of the Greek and Bulgarian frontier forces and that certain measures be taken to remove the difficulties arising out of the local minorities and the Bulgarian "comitadjis" problems.

This case is of striking interest for two reasons. First, it shows that so far as its wars are concerned, a member of the League is not free to define the meaning of self defense, and when it attempts to do so, it may act upon false information and aggravate a dispute which

otherwise might be kept within modest bounds and quietly settled. Under the Covenant an international body examines the question of whether or not a state is really acting in self defense; it also takes steps to prevent the dispute from developing into formidable proportions. Second, this case shows that if the danger of war is really to be removed, the underlying political difficulties must be solved.

As far as members of the League are concerned—and the principle applies to any action taken by Great Britain under the so-called British Monroe Doctrine—a type of international control exists which may prevent the abuse of the doctrine of self defense whether under the League Covenant or the antiwar pact. The chief states to which this international control does not apply are the United States and Russia. Whether or not the antiwar pact will be vitiated may depend very much on how these two states employ the doctrine of self defense in the future.

This same international machinery controls the application of cooperative defense, whether under the Covenant, the Locarno agreement or the French alliances. The sanctions contained in these agreements cannot be applied until the pacific processes of the League have been exhausted. As far as members of the League are concerned each state decides whether or not a breach of the Covenant has been committed, and whether or not it is under obligation to apply sanctions. As far as the parties to the Locarno agreement are concerned, the Council decides by unanimous vote.

To summarize, the only wars not prohibited by the pact are wars in self or cooperative defense. Before any such war or the application of the sanctions of the Locarno agreements or the Covenant may be resorted to, some state must first have gone to war in violation of its obligations. Moreover, each state, if a member of the League, is not free to determine whether or

not it is acting in self defense. This question is submitted to the League Council, or may be submitted to the Permanent Court of International Justice.

THE INTERPRETATIONS

During the antiwar pact negotiations, Secretary Kellogg declined to accept amendments or reservations to the pact. Any such reservations, he said, would weaken its purity and simplicity. Naturally he would be opposed to similar reservations or amendments by the United States Senate. Nevertheless, in his address to the American Society of International Law, Mr. Kellogg was the first to lay down "interpretations" which other governments subsequently accepted in place of amendments or reservations.

On August 8 the press reported Secretary Kellogg as follows: "Interpretations to the multilateral treaty to renounce war are in no way a part of the pact and cannot be considered as reservations." It was stated that the interpretations will not be deposited in the text of the treaty. Whether or not the President transmits the interpretative notes to the Senate with the text of the treaty, the Senate already has access to the text of the diplomatic correspondence embodying these interpretations. In determining whether or not to vote for the treaty, each Senator will thus be able to construe the treaty in the light of these interpretations.

If the terms of the treaty were precise, these interpretations might not be of importance. But in this case the treaty merely renounces war "as an instrument of national policy"—a phrase susceptible of wide and varying meanings. It does not seem possible to interpret this phrase without reference to the interpretations given it by Secretary Kellogg in his address to the American Society of International Law and in the notes of the various governments which preceded the signature of the pact.

In 1850 the United States and Switzerland signed a most-favored-nation treaty. In 1898 the Swiss Government declared that this treaty entitled it to receive unconditional most-favored-nation treatment by virtue of an interpretation made by Switzerland at the time of signing the treaty and which was accepted then by the American minister. Secretary John Hay agreed to this position, although it contradicted the customary American policy of negotiating only conditional most-favored-nation treaties. Secretary John Hay investigated the Swiss contention, and in a note of November 21, 1898 declared:

As a result of this investigation, it appears that the Executive Department was advised by its plenipotentiary of the alleged understanding, that the dispatch indicating it was communicated by the President to the Senate in connection with the treaty submitted for ratification, and that the treaty was ratified without amendment of the clauses in question.

Under these circumstances we believe it to be our duty to acknowledge the equity of the reclamation presented by your Government. Both justice and honor require that the common understanding of the high contracting parties at the time of the executing of the treaty should be carried into effect.

A second precedent may be found in an exchange of notes of April 4, 1908 between Secretary of State Elihu Root and Ambassador Bryce, at the time of the signing of the Treaty of arbitration between Great Britain and the United States. These notes declared that the final sentence of Article II had been inserted in order to preserve to both Governments the freedom of action "secured to the United States Government under their Constitution until any agreement which may have been arrived at shall have been notified to be finally binding and operative by an exchange of notes." It was also "understood that this treaty will not apply to existing precuniary claims nor to the negotiation and conclusion of treaties for the settlement of questions connected with boundary waters."

These notes were sent to the Senate for its information along with the treaty, but the notes were not men-

tioned in the Senate resolution, the instrument of ratification or the *procès-verbal* of exchange, all of which take the customary form.

The status of the interpretative notes is of more than academic interest for two reasons. First, some Senators may, before approving the pact, desire to secure a definition of the term self defense especially in its relation to the Monroe Doctrine. In view of the interpretations made by various Governments to the treaty, would the Senate be justified in making interpretations of its own?

Second, would approval of the antiwar pact without reservations or interpretations mean approval by the United States of the interpretations of other Governments?

The Soviet Government declared in its note of August 31 that "inasmuch as the note of the British Government has not been communicated to the Soviet Government as an integral part of the compact or its supplement, it therefore cannot be considered obligatory for the Soviet Government." Nevertheless, the British Government did transmit its interpretative notes to the League of Nations having a membership of fifty odd states. And Mr. Kellogg tacitly accepted these interpretations, in the correspondence leading up to the treaty. Despite its statement that the British interpretations were of no legal value the Soviet Government felt it necessary to say that it could not agree with any reservations "which can serve as justification for war." In adhering to the pact the Egyptian, Turkish and Persian Governments also declared that they could not be bound by the reservations of the other parties.

THE PACT AND RUSSIAN RECOGNITION

The United States did not as we have seen invite the Soviet Government to adhere to the pact because the United States has not recognized the Soviet Government. Such an invitation was, however, extended by France,

and Russia has now adhered. Senator Borah has expressed the opinion that ratification by the United States of the antiwar pact, to which Russia has adhered, will constitute recognition of Russia by the United States.

The Soviet Government was one of the original parties to the mutilateral convention signed at Lausanne July 24, 1923, providing for freedom of transit and navigation on the Straits. The parties to the convention were Great Britain, France, Italy, Japan, Bulgaria, Greece, Roumania, the Union of Soviet Socialist Republics, Jugoslavia and Turkey. Of these states, Turkey alone had recognized Russia at the time of signature of the treaty. This was done in a treaty of March 16, 1921. Great Britain later recognized Russia in a note of February 1, 1924; France followed with a note of October 28, 1924; and Italy with a note of February 7, 1924. Apparently these Governments did not regard their association with the Soviet Government in the Straits Convention as a recognition of that Government. The fact that Russia was recognized at a later date by France and Great Britain may or may not have been due to Russia's participation in this treaty.

On June 21, 1926 the United States, the Soviet Government and a number of other parties signed a convention revising the International Sanitary Convention of January 17, 1912. This convention was approved by the United States Senate on March 22, 1928 subject to a number of "reservations," two of which were as follows:

1. The ratification of this International Sanitary Convention is not to be construed to mean that the United States of America recognizes a régime or entity acting as government of a signatory or adhering power where that régime or entity is not recognized by the United States as the government of that power.

2. The participation of the United States of America in this International Sanitary Convention does not involve any contractual obligation on the part of the United States to a signatory or adhering power represented by a régime or entity which the United States does not recognize as representing the govern-

ment of that power until it is represented by a government recognized by the United States.

However, on September 28, 1928 the press reported that the State Department regarded its treaty with the Nanking Government in China of July 25, 1928 as constituting *de jure* recognition of that Government by the United States. If this report is correct, the precedent may be of importance in connection with Russia's adherence to the antiwar pact.

THE PACT AND THE CAUSES OF WAR

More than three centuries ago, Albericus Gentilis wrote in his *De Jure Belli*:

In the absence of a supreme tribunal charged with passing judgment on international disputes, and in the absence of a super-state charged with the power to carry out the judgments of such a tribunal, states have no other alternative than to resort to force in order to have their rights recognized and their interests respected.

The movement in favor of international organization during the last few years has usually assumed that if war is to be effectively banned, some peaceful means for settling disputes must be established.

During the negotiation of the antiwar pact, the French, Polish and Czechoslovak Governments, all of which have profited from the 1919-1920 peace treaties, stressed the belief that the antiwar pact would, to quote the French note, perpetuate "pacific and friendly relations under the contractual conditions on which they are today established.

FREEZING THE STATUS QUO

Does this statement mean that the states regard the antiwar pact as one more step in freezing the *status quo*? Do they regard the pact as an added guaranty that the boundaries established in the peace treaties shall not be

changed by force? In a note of October 6, 1928 the Hungarian Government, which lost territory as a result of the World war, informed the United States that it adhered to the antiwar pact "under the supposition that the Government of the United States as well as the governments of the other signatory powers will seek to find the means of rendering it possible that in the future injustices may be remedied by peaceful means."

Article 2 of the antiwar pact declares:

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise between them, shall never be sought except by pacific means.

This article does not seem to create a positive obligation to *settle* disputes by pacific means. It merely provides that they shall not be settled by non-pacific means. Neither does this article define the procedure to be followed. In his address of August 27, M. Briand declared, "Peace is proclaimed. That is well; that is much. But it still remains necessary to organize it. In the solution of difficulties, right and not might must prevail. That is to be the work of tomorrow."

The argument that the pact freezes the *status quo* and hence is undesirable is weakened by the fact that Germany who is vigorously opposed to the freezing of the *status quo* was among the first to support the antiwar treaty. Nearly a year before the signature of the antiwar pact Dr. Stresemann, the German Foreign Minister, had declared, "there does not exist in Germany any responsible man who would be criminal enough to drag Germany into a war with any power whatsoever, neither in the west nor in the east." Germany does not like some of the provisions of the Treaty of Versailles, but Germany does not wish to change them by force. Apparently Germany believes that the conclusion of the antiwar pact will make for a better international feeling

and that this feeling will lead to voluntary readjustments in the peace treaties of immensely more value than any attempted readjustments by force.

Moreover, as the Graeco-Bulgarian incident shows, the members of the League have accepted already the obligation of pacific settlement and erected machinery to assure peace. Article 11 of the League gives any member of the League "the friendly right" to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Article 19 gives the Assembly the right to advise the consideration of treaties "which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

The members of the League have therefore devised machinery, imperfect as it may be, for the settlement of disputes. Through its arbitration agreements, its "Bryan Peace Commission treaties" and the antiwar pact, the United States has accepted the same obligations. But it has yet held back from participation in machinery to make the application of the obligations effective. It has not associated itself with the general activities of the League.

THE QUESTION OF SANCTIONS

The first part of this report has shown that many states have emphasized the principle of sanctions or of cooperative defense. Many of them have stated that unless they can rely upon help from other states in case of attack they cannot disarm. Nevertheless, unlike the Covenant of the League, the antiwar pact contains no sanctions. If one party violates the pact, the other states do not promise to do anything about it; they simply are relieved of their obligation not to go to war against the guilty state. Nevertheless, in the case of

wars prohibited by the Covenant, the violation of the pact by a League member would encounter the sanctions imposed by members of the League. The main sanction provided for in the Covenant is an economic boycott. The opinion has been frequently expressed that the League could not successfully apply such a boycott against a violator of the Covenant, so long as the United States, whose commercial interests would be immediately affected by such a boycott, insisted upon adhering to the old laws of neutrality which had been based on the legality of war.

Several attempts to waive these traditional neutral rights of the United States in the case of an aggressor have been made. The original Burton resolution introduced December 5, 1927 declared that the policy of the United States was to prohibit the export of arms to an aggressor country, as determined by the President. Objection to the original resolution was made on the ground that in prohibiting the export of arms to one belligerent and not to another, the United States would be violating the rules of neutrality. This objection would now seem to have been met by the antiwar pact, *i.e.*, if a state goes to war in violation of the pact, the United States is under no obligation to treat it as a neutral but as a state which has violated its obligations.

While the United States has not undertaken any obligation to apply sanctions against a state which violates the antiwar pact, it is argued that the United States will feel morally bound to support the pact of which it is the author by waiving its "neutral rights" in case the League members should attempt to impose an economic boycott against a state which violates the pact and the Covenant at the same time. On July 30, 1928 Sir Austen Chamberlain declared in the House of Commons that the importance of the antiwar treaty depended on "how the rest of the world thought the United States was going to judge the action of the aggressor, and

whether they would help or hinder him in his aggression."

It has also been suggested that every party to the antiwar pact will feel morally bound to act against a state which violates it regardless of the particular issue. M. Briand declared on August 27 that a guilty state "would run the positive risk of seeing all of them gradually and freely gather against it and redoubtable consequences that would not long be ensuing."

Senator Borah in an interview in the *New York Times* of March 25, 1928 declared:

Another important result of such a treaty [the antiwar treaty] would be to enlist the support of the United States in cooperative action against any nation which is guilty of a flagrant violation of this outlawry agreement. Of course, the Government of the United States must reserve the right to decide, in the first place, whether or not the treaty has been violated, and second, what coercive measures it feels obliged to take. But it is quite inconceivable that this country would stand idly by in case of a grave breach of a multilateral treaty to which it is a party.

At present the League of Nations Council has been given the authority to conciliate disputes arising among the great majority of the states of the world and the action of the Council may therefore be of importance in bringing about or preventing war; or of stigmatizing as an aggressor a state which goes to war. Obviously such a decision may vitally offend the interests of the United States and it is argued that the antiwar pact will morally oblige the United States to accept the conditions thus created whereas otherwise it could protest against it. Commenting on this situation Professor Edwin Borchard has stated: "Far better and safer would it be had we openly joined the League of Nations and been privileged to take part in deliberations which may lead to most important consequences. . ."

M. Jules Sauerwein, prominent French journalist, stated in the *New York Times* that "the United States Government becomes the moral guardian of the *status*

quo created by the peace treaty and subsequent treaties." After reviewing the disputes over Vilna and Danzig, Italian ambitions in north Africa, Jugoslavia's demand in regard to Salonika, Bulgaria's aspiration in regard to Constantinople, and Russia's threat to peace, he concludes: "We can see what a magnificent thing the United States has undertaken in seeking to prevent another war in unfortunate Europe."

On the other hand, Lord Cushendun, Acting Secretary of State for Foreign Affairs, declared in an interview at Paris at the time of signing the pact that he did not think the pact would make any "modification" in the American "attitude of aloofness from European complications, although there are some of us who might wish otherwise. There is no implication or any indication on the part of America to concern itself with European affairs."

Moreover it may be argued that the United States is not bound in any way by the antiwar pact to pay attention to any decisions of the League. The ratification of the pact will not change the legal relationship between the United States and the League. The United States will still have the right to decide whether or not a state going to war has done so in self defense. Moreover, even if the antiwar pact were not in existence, the United States would be affected by a decision of the League Council just as the United States would be inevitably affected by another European war.

As far as sanctions are concerned, the antiwar pact is important from another angle: it would seem to prevent a state from resorting to self-help to enforce a claim against another state. Suppose, for example, that the United States and state X submitted a dispute to an arbitral tribunal and that the tribunal decided in favor of the United States. Suppose also that state X refused to execute the award. Under the antiwar pact it may be argued that the United States would be prohibited

from going to war against state X to compel execution. The antiwar pact would not, however, seem to prohibit the use of *international* sanctions for this purpose, since the pact prohibits merely war as an instrument of *national* policy. An international sanction does not necessarily mean an international force, but it may mean merely international authorization and control over the action of a single state.

THE PACT AND DISARMAMENT

In the third place, disarmament has been regarded as essential to a peaceful international society. In its note of April 27, 1928 the German Government declared that the antiwar pact "must give a real impulse to the efforts for the carrying out of general disarmament." The Soviet Government declared that without the obligation to disarm, the antiwar pact "will remain a dead letter without real meaning." An opposite point of view has been expressed, however, by President Coolidge and by Mr. Herbert C. Hoover, the Republican presidential candidate. The former declared that the antiwar pact did not detract from the "obligation" to "maintain an adequate national defense against any attack."

In his speech accepting the Republican nomination for President, Mr. Hoover declared that "we must and shall maintain our naval defense and our merchant marine in the strength and efficiency which will yield to us at all times the primary assurance of liberty, that is, of national safety." In his Elizabethtown, Tennessee, address, October 6, 1928, Mr. Hoover said that "we must maintain our navy and our army in such fashion that we shall have complete defense of our homes from even the fear of foreign invasion." Similar expressions have been made in Europe.

While armaments for defense may be in keeping with the spirit of the antiwar pact, obviously this need is relative rather than absolute. That is, the defensive needs

of the United States depend upon the size of armaments of its neighboring powers and the political likelihood that these powers will attack the United States.

Commenting on Mr. Hoover's speeches on the navy, President Nicholas Murray Butler of Columbia University has stated:

When the American people pledge renunciation of war they mean what they say, and take it for granted that our fellow-nations mean what they say. We shall not support any policy which would at once enter upon a new and enlarged plan of naval construction under the guise of defending ourselves against some power which has only just taken a formal pledge not to attack us. The contradiction and the hypocrisy of it would be comic were they not so unspeakably tragic.

It should be pointed out, however, that the army of the United States is already one of the smallest in the world and that its navy is inferior in strength, so far as large cruisers are concerned, to that of Great Britain. Nevertheless, it is argued that if the parties to the anti-war pact should proceed to lay down large building programs, they do not take the pact seriously and leave themselves open to charge of bad faith and even of illicit ambitions. If the real spirit of the pact is to be preserved and fostered, international agreements in regard to armaments upon a basis acceptable to the principle powers, it may be argued, is essential.

THE MORAL SIGNIFICANCE OF THE PACT

The legal aspects of the antiwar pact have now been discussed. It has been necessary to determine the actual legal effect of the pact upon the right to go to war, and the relation of this pact to other factors in international relations, such as the pacific settlement of disputes, sanctions and disarmament. Our analysis seems to have demonstrated that the legal criticisms directed against the pact are not so great as some critics have supposed and that it contains no legal commitments not explicitly stated in the document. But, even if the pact should

contain loopholes through which a self-seeking state may squirm, friends of the pact believe that it must be judged fundamentally, not by technical criteria, but by the moral and spiritual effect it may have upon world opinion and upon the future conduct of diplomacy and international relations.

Until very recent times groups in every important country have glorified the institution of war. It was not many years ago that von Moltke wrote: "War is an element in the order of the world ordained by God. In it the noblest virtues of mankind are developed; courage and the abnegation of self, faithfulness to duty, and the spirit of sacrifice; the soldier gives his life. Without war the world would stagnate and lose itself in materialism." In every great state the army and navy have occupied a high social position and have had great influence upon policy.

Moreover, the history of European diplomacy and international relations generally seems to demonstrate that most great powers have regarded war as sooner or later inevitable. They have relied for their safety and their rights upon physical strength.

Diplomats formed combinations and made bargains to postpone the evil day; but down in their hearts they believed the day would come. In 1914 Europe was ridden with war psychology. The international system was built upon a conviction of war's inevitability. No state dreamed of renouncing war as an instrument of national policy.

Ever since the Congress of Berlin of 1878 the great powers followed a policy of threats. They did not intend that war should occur as a result of their demands, but they did believe in backing up these demands with a show of force; they believed that the states upon which they made these demands were weak and would therefore have to give way.

Friends of the antiwar pact state that it will have a revolutionary effect upon international relations as they

have existed in the past. In his American Legion speech, President Coolidge declared: "Had an agreement of this kind been in existence in 1914, there is every reason to suppose that it would have saved the situation and delivered the world from all the misery which was inflicted by the great war." It is argued that the antiwar pact will abolish war psychology, and force governments and peoples to think in terms of peace; that it will no longer be possible for foreign offices to advance their ends by a policy of threats—whether open or veiled; that it will no longer be possible for demagogues to whip up popular enthusiasm in favor of wars on behalf of "national destiny" or "national honor." Disputes will continue to arise between nations; and they may or may not be positively settled by peaceful means. But it is contended that as a result of the new peace psychology produced by the pact, peoples will take the view that no matter how serious the dispute, there is no justification for solving it by force, unless the question of self defense is involved. Some opponents state that the pact has no positive value since it does nothing which the League of Nations has not done. Nevertheless, while the League has made great progress toward organizing the machinery of peace, the "gap in the Covenant" still exists. This gap will be filled by the pact, it is argued, and, what is of equal importance, the United States, which has declined to accept the obligations of League membership, for the first time commits itself not to embark upon aggressive war.

Other opponents argue that the pact is useless without machinery for the pacific settlement of disputes, without disarmament, without the modification of peacetime policies which in the past have led to war. But in reply it is declared that if governments take the pact seriously, if in a high act of faith they really believe their neighbors have renounced war, they will soon translate this belief into acts. The occupation of the Rhineland, the prohibition of the union of Germany and Austria,

the demand for large navies and high tariff walls rest largely upon the fundamental fear of war. If nations now really trust each other's promise, the justification for these and for other policies will, it is contended, come to an end.

If despite the ratification of the antiwar pact, governments decline to change their policies, if they construct large navies in the name of self defense, and if they follow policies which unnecessarily irritate their neighbors, they may be charged with hypocrisy and the international situation may become more critical than if no antiwar pact existed. But it is argued that even if governments pay only lip service to the ideal, the antiwar pact will become a formidable weapon in the hands of public opinion. If the British Government introduces a large navy bill into Parliament, members will ask, does this bill conform to the spirit of the pact? If the Government of the United States should land troops in Nicaragua, public opinion will ask, does this intervention conform to the spirit of the pact? Legal arguments upon these points may be made. But whatever the result of these arguments may be, the moral fact of the existence of the pact may constitute an overpowering obstacle to any peace-time policy which disturbs international friendship. Viewed from this standpoint, friends of the pact believe that it contains really immense possibilities.

THE MULTILATERAL TREATY FOR THE RENUNCIATION OF WAR³

From the draft of a bilateral treaty of perpetual friendship between France and the United States presented by the Minister of Foreign Affairs of France under date of June 20, 1927, has been developed a multilateral treaty, signed at Paris on August 27 by fifteen

³ By David Jayne Hill. *American Journal of International Law*. October, 1928.

Governments, including five great military powers, to which a great number of others have since expressed their intention to adhere. The process of this development is explained in detail in a public document on the "Notes Exchanged on this Subject by the United States and Other Powers from June 20, 1927 to July 20, 1928."

It is of interest to the readers of this *Journal* to inquire, what precisely is the nature of this document?

Regarded merely as a document, this treaty is marked by extreme simplicity. In the preamble the purpose of the treaty is stated in part as follows:

Persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples may be perpetuated,

the signatories have decided to conclude a treaty.

The whole substance of this compact is expressed in two articles. Article I condemns recourse to war for the solution of international difficulties and renounces it as an instrument of national policy. Four observations are suggested by the terms of this article: (1) The contractants condemn and renounce war "in the name of their respective peoples," thus pledging not only the future conduct of the Governments themselves but also the honor of the peoples whom they represent. (2) While war is condemned in principle and renounced as an instrument of national policy, there is no declaration as to the present or future legality of war. (3) This compact does not "outlaw" war. The renunciation of war affects only the signatories of the treaty in their relations to one another and only as far as specified. (4) The renunciation of war here pledged is not a renunciation of the use of armed force in all cases. It is specifically confined to war as an instrument of national policy. This compact therefore permits the defense of the national domain from invasion, and also

allows of forceful intervention for the protection of the rights of citizens and national rights on the high seas, so long as a violation of them is persisted in without redress.

Any other interpretation than this would reduce this compact to a nullity. No nation can be expected to ratify so broad a covenant as this treaty without either a formal or a tacit understanding that this is what the treaty means. Governments exist for the protection of rights, and constitutions are attempts to organize such protection by supplying governments with the means of action; and no responsible state will renounce its right and disregard its duty to exercise the normal functions of government. Were it not, therefore, for the second article of this treaty, this compact might well be dismissed from serious consideration; for without a substitute for armed force for the vindication of international rights and the redress of international wrongs, the compact, by forfeiting all means of protecting rights, would imply a surrender of those rights and an abdication of the duty of defending them.

Article II pledges the contracting parties to the engagement that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means. It is this article which gives significance to this treaty. It saves it from the prospect of a war of words over such terms as "aggression," "defense," prior treaty engagements, and many other smokescreens to conceal a violation of Article I.

No solution of a dispute or conflict is to be sought except by pacific means. What are these "pacific means"? Here it becomes evident what the next step must be. It is the further organization of "pacific means." This is not the time or place to enter into the discussion of this next step. But it is evident that

the multilateral treaty will not be self-operating. It specifically points to something outside of itself—to law, to courts, to the arbitral process, to mediation and conciliation.

Are the existing "pacific means" equal to the requirements? As to law, after hesitation regarding the proposed clarification and extension of international law, the whole subject has been sequestered. As to courts, there have been difficulties about adhering to a nominal court of justice possessing an advisory function, to be exercised at the behest of a political body, by which a nation may be adjudged a culprit without a process of law by the mere personal opinion of judges. The United States, having set the example in its Constitution of binding its own highest court by a law which controls its decisions, has not thus far been willing to abandon a successful experience for a political adventure. The whole subject of an international court of justice to be guided by definite law is now ripe for discussion, and the multilateral treaty in the process of ratification will necessarily afford an occasion for an examination of that subject.

The American Secretary of State has opened a vista of long perspective in transmuting Monsieur Briand's proposal of a bilateral treaty between the United States and France into the multilateral treaty. In doing so, Secretary Kellogg has been faithful to the traditional policy of the United States in wishing to be equally friendly to all nations. The multilateral treaty is not an alliance. It is the expression of a new conception of international relations. As such, it is liable to misunderstanding, and in some quarters this compact has already been misunderstood.

What, it is asked, is to happen to a contracting party if it violates the compact? Is the United States under obligation to bring it to task and punish it for its defection? Not at all. Such a delinquent will have proved

its disloyalty to its pledged word, but the United States makes no pledge to improve its morals or to inflict upon it a penalty by making war upon it. The United States does not guarantee these signatures. It proposes a policy of voluntary peace. This policy is not identical with that of several European political and military combinations. Those compacts require the contracting parties to punish war with war. What then will be the probable action of the United States under this compact toward a military situation in another part of the world? It will first of all no doubt remind the delinquent signatories of their solemn engagement. It may properly call attention to the existence of Article II of the multilateral treaty and the obligations under it. But there is no enforcement clause in this compact.

The signature of this treaty marks a great advance in the cause of international peace. It also clearly indicates what is still necessary to give it effectiveness. The renunciation of war requires the further organization of peace. The historic forces are still in action and new issues are to be expected. To have agreed on so wide a scale to "condemn recourse to war" and to have renounced it "as an instrument of national policy" is to have laid a solid foundation for inaugurating a new era in the life of mankind.

WAR AS AN INSTRUMENT OF NATIONAL POLICY⁴

The signing of the Kellogg-Briand multilateral treaty on August 27 is destined to become an event of first importance in the development of international law as well as an occasion of high moral significance in the progress of the nations towards the peaceful settlement of international disputes. It may indeed be conceded

⁴ By C. G. Fenwick. *American Journal of International Law*. October, 1928.

that from its lack of machinery for the execution of its promises the treaty adds no new sanctions to what may be called the procedural branch of international law. Yet this defect does not reduce the agreement to a mere gesture, a simple declaration of good intentions, a resolution to avoid war if it can be conveniently done. Such an interpretation, while warranted by a narrow examination of the obligations assumed in the treaty, does not do justice to the contribution which the treaty makes towards a definition of the place which war is henceforth to have in the scheme of international relations. Moreover it is entirely inaccurate to speak of the treaty as creating moral rather than legal obligations. The obligations may be vague and may present numerous loopholes of escape, but such as they are, being embodied in a formal international contract, they are legal.

The contracting parties declare that they "condemn recourse to war for the solution of international controversies" and that they "renounce it as an instrument of national policy in their relations with one another." Assuming that the first part of the declaration is not intended to be more comprehensive than the second part, the inquiry may be directed as to the meaning of war "as an instrument of national policy" and as to the extent of the reservations which attend its renunciation.

Prior to the year 1920 war had an accepted place in the procedure for the settlement of international disputes. It was not to be entered upon lightly, it could only be waged for a "just cause"; but as the determination of the gravity of the circumstances and of the justice of the cause was left to the individual state, war held its own as the final resort of the unsatisfied claimant, the *ultima ratio* in the adjustment of a deadlocked controversy. This place of war in the procedure of international law was severely restricted by the obligations accepted by the members of the League of Nations and by the signatories of the optional clause attached to

the protocol establishing the Permanent Court of International Justice. But apart from the fact that in neither case were the obligations not to resort to war absolute, the United States, among others, is not a party to them, so that on the eve of the signing of the Kellogg-Briand treaty the so-called "right to make war" was obviously susceptible of further curtailment.

The preamble to the treaty throws some light upon the renunciation of war as an instrument of national policy. It recites that the contracting parties are convinced that all "changes in their relations with one another" should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory power which shall hereafter seek to "promote its national interests" by resort to war should be denied the benefits of the treaty. The scope of these two phrases will perhaps be clearer if the fundamental, but implied, reservation of the treaty be first examined.

War as an "instrument of national policy" does not include wars of self defense. This is a specific understanding set forth in the identic note accompanying the submission on June 23d by the Government of the United States of the draft treaty in its revised form. "That right" (of self defense), says the note, "is inherent in every sovereign state and is implicit in every treaty." The note seems to convey that by self defense is meant the defense of territory from attack or invasion, but it deliberately refrains from attempting "a juristic conception of self defense," making it clear that the Department of State was well aware of the latitude of interpretation of which that term was susceptible.

Yet it is the very lack of a definition of self defense that makes the renunciation of war as an instrument of national policy so vague as to be almost misleading. Resistance to direct attack is one thing; resistance to indirect menace of attack quite another. It has never been contemplated that if a state should mobilize its forces

and proceed to attack its unoffending neighbor, the latter would be prevented from meeting war with war. The rule of self defense in this limited form will doubtless continue to hold its own against all provisions of law, as it does in the national law of the individual state.

But things are not so simple as that in the present international relations of states. It is the remoter aspects of national defense which create the real difficulty. Due to the lack of an effective organization for preventing resort to force, international law developed during the eighteenth and nineteenth centuries a tradition of national defense which included practically the whole range of the causes of war. It was in "self defense," for example, that France vetoed the accession of a Hohenzollern to the throne of Spain in 1870, and, not finding satisfaction in the explanations of the German Government, declared war to protect herself against the alleged danger threatening her. It was in defense against Serbian propaganda seeking the disruption of the dual monarchy that Austria-Hungary declared war in 1914, and this initial act of self defense found its fulfillment in a vicious circle in which seven states were found each defending itself against the aggression of some other and each the aggressor in the other's eye.

A conspicuous illustration of the more remote aspects which self defense may assume is to be seen in the Monroe Doctrine, by which the United States has sought to protect itself against conditions, not in themselves menacing, which might subsequently weaken its strategic position of geographic isolation. Remembering the traditions of the United States, it is difficult to believe that the government is now renouncing war in defense of the Monroe Doctrine, assuming that a grave issue involving that policy should arise. Although the Kellogg-Briand treaty makes no mention of the policy, it is safe to infer that it is "implicit in every treaty" to be ratified by the United States.

Great Britain on her part has been more explicit. Her own Monroe Doctrine, as tenaciously held as ours, looks to the protection of her dependencies in distant parts of the world. On May 18th Sir Austen Chamberlain, in his reply to Mr. Kellogg, after pointing out that there were "certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety," emphasized that the British Government had been at pains to make it clear in the past that interference with those regions could not be suffered, and asserted that "their protection against attack is to the British Empire a measure of self defense." If we assume that the "certain regions" referred to are not part of the British Empire itself, the position taken by the Foreign Minister suggests an intention to prevent the creation of any conditions, such as control by Russia over Afghanistan, which might indirectly threaten the security of the Empire or weaken its defenses. Further, any interference with the channels of communication between the mother country and the dependencies would undoubtedly be resisted as if it were a direct attack upon the territory.

Alongside these defensive policies of the United States and Great Britain may be matched the policy of France in the Mediterranean, the policy of Italy in the Adriatic and the policy of Japan in Manchuria. In each case the principle of national defense is given an interpretation extending far beyond the conception of resistance to actual armed invasion. There is ever present the necessity of anticipating conditions which, if allowed to come about, might ultimately embarrass the resistance of the state to direct attack. By a very simple manipulation of the circumstances leading to a crisis all wars can be made out to be defensive wars, and governments on both sides have not been backward in giving to their cause the moral support that has always attended self defense. While we may agree with

Mr. Kellogg that any definition of self defense in positive terms might make it "easy for the unscrupulous to mould events to accord with an agreed definition," the failure to adopt a definition renders the obligation of the new treaty exceedingly elastic.

War as an "instrument of national policy" may therefore be defined as war in pursuance of national claims or in promotion of national interests whenever such claims and such interests do not bear a character involving the right of self defense "inherent in every sovereign state." Assuming an honest intention on the part of the contracting states to live up to the obligation undertaken, there is still a wide field for the operation of the antiwar treaty. It has, for example, been the policy of the United States to afford special protection to the lives and property of its citizens in countries where the standard of law and order is regarded as below normal. The Kellogg-Briand treaty would preclude the United States from resorting to war, or using the threat of war, to enforce its views against Mexico in the settlement of a controversy such as the recent one concerning the legality of the Mexican land and petroleum laws of 1926. What would happen if the alternative procedure of arbitration offered by the treaty were rejected by Mexico or failed otherwise to adjust the controversy lies beyond the contemplation of the treaty.

It must be admitted that the disputes coming within the field of the treaty would in most cases not be likely to bring about a resort to force in the absence of the obligation of the treaty. Disputes over the extent of the marginal sea, riparian rights along boundary rivers, the privileges of merchant ships in foreign ports, communications and transit, even the status of aliens, have not in the recent past led to threats of war except in the rarer cases where there were present in the dispute the remoter elements of national defense. But if the

Kellogg-Briand treaty does no more than raise the issue of the various grounds of war as a form of procedure for the settlement of international disputes it will have fulfilled a useful purpose. Like the arbitration treaties that have been growing in number since the opening of the twentieth century, it will have drawn in the loose ends of the present legal system nearer to the ultimate perfect circle.

THE KELLOGG TREATIES SANCTION WAR⁵

The origin of the negotiations between the United States and other powers leading to the conclusion of the so-called Kellogg treaties is well known. Beginning with an expression of good-will in M. Briand's note of April 6, 1927, commemorating the entry of the United States into the war and expressing France's willingness to conclude a treaty renouncing war between France and the United States, the negotiations developed rapidly. On June 20, 1927, the French Foreign Minister presented the draft of a treaty embodying his proposal, providing for a condemnation of "recourse to war" and renouncing war as between France and the United States as an "instrument of their national policy." The settlement of all disputes was never to be sought "except by pacific means."

On December 28, 1927, Mr. Kellogg proposed to the French ambassador the extension of the proposed declaration to all the principal powers. It was argued in the United States that, if the treaty were signed by the United States and France alone, it would be a treaty of alliance. In his accompanying draft of a treaty, Mr. Kellogg recommended the outright and unconditional renunciation of war and the solution of disputes by pacific means only.

⁵ An address delivered before the Williamstown Institute of Politics by Edwin M. Borchard. *Nation*, September 5, 1928.

The French press was critical. It was maintained that France had obligations to the League of Nations and could not make these new commitments. But the criticism was dropped after forty-eight hours on the publication of the French reply undertaking to renounce "wars of aggression." This gave apparently a new turn to the negotiations. The State Department did not reply officially, but officers of the department pointed out that the term "aggressive" changed the entire meaning of the proposition and was not acceptable to the United States. In this position the State Department seems to have had the support of the American press. Editorially it was agreed that "renunciation" was too intricate an expression to define and that the French interpolation of this qualification left Mr. Kellogg's proposition denatured of its vital part and meaningless. Mr. Kellogg pointed out in his new note that the first French note of June 20, 1927, contained no limitation of wars of aggression. In this connection it is well to note that Sir Austen Chamberlain rejected the attempted definition of "aggressor" in the Geneva Protocol as, I believe, one who declines to submit a dispute to discussion in these words: "I therefore remain opposed to this attempt to define the 'aggressor' because I believe that it will be a trap for the innocent and a signpost for the guilty."

Considerable correspondence took place in the early part of 1928 as to the construction to be given to the proposed treaty. In his note of February 27, 1928, in explaining his objection to qualifications on the obligation to renounce war, Mr. Kellogg stated:

The ideal which inspires the effort so sincerely and so hopefully put forward by your [the French] Government and mine is arresting and appealing just because of its purity and simplicity; and I cannot avoid the feeling that if governments should publicly acknowledge that they can only deal with this ideal in a technical spirit and must insist on the adoption of reservations impairing, if not utterly destroying, the true significance of their common endeavors, they would be in effect only recording their impotence, to the keen disappointment of mankind in general.

The same thought was expressed in Mr. Kellogg's speech to the Council of Foreign Relations on March 15, 1928, in which he said:

It seems to me that any attempt to define the word "aggression" and by exceptions and qualifications to stipulate when nations are justified in going to war with one another would greatly weaken the effect of any treaty such as that under consideration and virtually destroy its positive value as a "guaranty of peace."

The subsequent negotiations, however, disclose the unfortunate fact that these very exceptions and qualifications to which Mr. Kellogg objected as so nullifying in effect have, in fact, found their way into the treaty as now universally construed.

The French Government maintained that the treaties must be construed so as not to bar the right of legitimate defense, the performance of obligations under the Covenant of the League of Nations, under the treaties of Locarno, under its treaties of alliance with its allies—now for some unexplainable reason called treaties of neutrality—that the treaty was to become ineffective if violated by one nation, and that it was to be signed by every state before it became effective as to any state. With the exception of this last reservation, Secretary Kellogg agreed to this interpretation of the French Government in his speech before the American Society of International Law on April 28, 1928, and incorporated his interpretation of this reservation as to self defense, wars under the League Covenant, under the treaties of Locarno, and certain undefined and evidently unknown "neutrality" treaties, in his note of June 23, 1928, to the powers, some fifteen in number, adding that "none of these governments has expressed any dissent from the above-quoted construction."

In his note of May 19, 1928, accepting the American proposition in principle, Sir Austen Chamberlain for Great Britain expressed his assent to the reservations

made by France and added a new one in the following paragraph:

There are certain regions of the world, the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self defense. It must be clearly understood *His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect.* The Government of the United States have comparable interests, any disregard of which by a foreign power they have declared they would regard as an unfriendly act.

The words in italic were repeated in the British note of July 18, 1928, undertaking to sign the treaty only on the understanding that the British Government maintain this freedom of action with respect to those regions of the world in which it had "a special and vital interest."

The original proposition of Mr. Kellogg was an unconditional renunciation of war. *The treaty now qualified by the French and British reservations constitutes no renunciation or outlawry of war, but in fact and in law a solemn sanction for all wars mentioned in the exceptions and qualifications.* When we look at the exceptions we observe that they include wars of self defense, each party being free to make its own interpretation as to when self defense is involved, wars under the League Covenant, under the Locarno treaties and under the French treaties of alliance. If self defense could be limited to the terms "to defend its territory from attack or invasion," as suggested by Mr. Kellogg, it would be of some value, but it is understood that no specific definition of self defense is necessarily accepted. Considering these reservations, it would be difficult to conceive of any wars that nations have fought within the past century, or are likely to fight in the future, that cannot be accommodated under these exceptions. Far from constituting an outlawry of war,

they constitute the most solemn sanction of specific wars that has ever been given to the world. This cannot be charged primarily to Secretary Kellogg, whose intentions were of the best, but is a result of the reservations insisted upon by European powers, which, it is still to be feared, comprehend peace as a condition of affairs achieved through war or the threat of war. The mere renunciation of war in the abstract in the first article of the treaty has but little scope for application, in view of the wars in the concrete, which the accompanying construction of the treaty sanctions. It is idle to suppose that the official construction given to the treaty by all the signatory powers is not as much an integral part of the treaty as if it had been made a part of Article 1.

Again it will be noticed that we recognize a British claim to use war as an instrument of national policy in certain undefined "regions of the world," any "interference" with which by anybody, including the United States, will be regarded by Great Britain as a cause of war. To this we subscribe. When the United States at the first Hague Conference secured recognition by our cosignatories for the Monroe Doctrine, it was regarded as an achievement of American diplomacy. But the Monroe Doctrine has geographical limits known to everybody. To this new British claim there are no geographical limits. The vague and expansive terms of the British claim to make war, now recognized by us, covers any part of the world in which Britain has "a special and vital interest." No such broad claim of the right to make war has ever before been recognized.

But the most extraordinary feature of this treaty still remains to be mentioned. It will have been noticed that we recognize the legality of League wars and Locarno wars. As Europe correctly seems to assume, we are now bound by League decisions as to aggressors and League policy generally but without any opportunity

to take part in the deliberations leading to League conclusions. We indeed recognize by this treaty the legal right of the League to make war against us, and it will be observed that Sir Austen Chamberlain in his note of May 19, 1928, frankly admits that respect for the obligations arising out of the Covenant is "the foundation of the policy" of Great Britain. Whether the further European claim that we are bound to support League conclusions as to "aggressor" nations, and other political conclusions, either by joining with the League or by refusing to trade with the League-declared pariah, is sustainable or not, at the very best it places us in the uncomfortable position either of being bound by decisions in the making of which we had no part or of having recriminations leveled against us for refusing to support our treaty. The new contract begins with diverse interpretations of its obligations, for European views, reflected by Mr. Edwin James of the *New York Times*, leave no doubt that Europe regards this treaty as a means of involving us in European politics. And we are entangled in the most dangerous way, for we are bound by decisions made in our absence, even decisions made against ourselves—because the recognition of the French and British reservations, now made the authoritative interpretation of the treaty by all the signatories, is a commitment for us. Our hands are tied, not theirs. The reservations are made at our expense, not theirs. Far better and safer would it be had we openly joined the League of Nations and been privileged to take part in deliberations which may lead to most important consequences. We might have been able to prevent undesirable conclusions and use our bargaining power to obtain occasional benefits and advantages instead of disadvantages only. We are now about to sign a treaty in which we expressly recognize the right of the other signatories to make war upon anybody, including ourselves, for the purpose of enforcing, even against us,

their mutual obligations under the Covenant of the League of Nations, not to mention individual undefined national interests in any part of the world. They alone will determine the occasion of such action, without our participation.

In justice to Europe, it cannot be said that they have left us in doubt as to their conception of our obligations. Indeed, these obligations are expressly or implicitly contained in the very reservations which the United States has accepted. Should we repudiate these commitments, we shall be denounced as a violator of our own treaty and not without some justification.

It has not been a pleasant task to analyze these treaties. The original American proposal was progressive, pure and simple, to use Mr. Kellogg's expression. The European amendments transformed the proposal into something entirely different—into a universal sanction for war, into a recognition by us of Europe's right to wage war, even against the United States, whenever the individual interests of certain nations are deemed to require it and whenever the League, in its uncontrolled discretion, decides upon it.

Need more be said? Would it not be far better either to join the League outright and have a share in those deliberations which to us may be so portentous or, better still, make the recourse to arbitration of justiciable issues and the submission to conciliation of non-justiciable issues obligatory at the request of either party? That would be a positive commitment which would make war extremely difficult, whereas the present treaties make war extremely easy. It is to be doubted whether the supposed valuable psychological effects of renunciation of war in the abstract can counterbalance the positive legal sanction for war in the concrete. If this treaty is ever ratified, the test of its efficacy will be its effect on a limitation of armaments. The President's declaration that it is not expected to have any

such effect and the avowed pleasure of certain foreign official newspapers at that promise hardly justify at the moment strong hopes of such a result. The abolition of war will, therefore, have to be pursued along other lines. Possibly in the elimination of the economic causes of conflict, including the attempted monopoly of raw materials and markets and in the entente of business interests across national boundaries, there lies more hope than in legal efforts to preserve by force the *status quo*. Other machinery is needed to make changes in existing conditions, when time and circumstances require. To that effort but little attention has yet been paid. These matters are mentioned merely to indicate that, even if the Kellogg treaties are not ratified or are accompanied by explanatory reservations on our part, the solution of the problem of war and peace among independent nations has, perhaps, hardly been begun.

AMERICA'S SECOND PEACE ADVENTURE⁶

It is patent that these reservations at once transformed the whole significance of the Kellogg proposal. It had been presented as a different means of insuring world peace from that employed in the League of Nations. As amended it became no more than a moral gesture which left the League method unmodified. It had been conceived as a substitute for the Locarno Pact and the other systems based upon the preservation of peace by force.

But since in adhering to the proposal the signatory powers expressly reserved the right to employ the League and Locarno machinery, and since such employment in itself insured the making of war under certain circumstances, the pact to abolish war lost its original basis.

⁶ Excerpts from an article by Frank H. Simonds. *American Review of Reviews*. September, 1928.

Along with these reservations went an even more striking development. From Paris and from London, first through press comment and finally in a formal utterance of Sir Austen Chamberlain in the House of Commons, came the disclosure that to the European mind the value of the Kellogg pact lay exclusively in the extent to which the United States accepted it. Its usefulness was contingent on the willingness of the United States to join European nations in such action as they might take against an adventure in aggression by a signatory power.

Sir Austen clearly and unmistakably asserted that the Kellogg pact by itself was without importance in preventing war. Its value must be found in the disclosure of whether, having proposed this international agreement, the United States would subsequently associate itself with European nations in coercing a nation resorting to war in defiance of the contract. At the very least the question was whether the United States would refrain from giving aid or comfort to such a power.

Obviously, then, the situation reverted to that created by the European interpretations of Woodrow Wilson's peace proposals. Then the European thesis was that these proposals should first be amended to conform with European conditions, and that thereafter they were important only as they represented the pledge of the United States to employ its vast resources, in men and in money, in guaranteeing the situation established by the peace treaties.

Today, as Sir Austen indicated, the importance for Europe of the amended Kellogg proposal lies exclusively in the extent to which the United States regards itself as committed to action with Europe against any European power disturbing the peace.

I do not see how any reasonable person can fail to recognize that, as a consequence, we are back where

we started. What happened to Woodrow Wilson has happened to Frank Kellogg, what happened to the Covenant of the League of Nations has happened to the proposal to outlaw war. Europe has accepted the latter, as it did the former, only after amending it to conform to European conceptions. Then it has indicated officially—as with the League—that it has no value other than that which may be found in a later revelation that it represents an American purpose to associate itself with European machinery for preserving peace.

Behind the European conception of the preservation of peace is the belief that peace can be preserved only by force. All European undertakings to guarantee peace are based upon the ultimate resort to war to subdue any nation which disturbs the peace. It follows quite naturally that, since force is considered the basis of peace, the addition of the overwhelming force of the United States to that of League states seems the one sure promise of enduring peace.

Europe says in substance, "The Kellogg proposal can have no value whatever, save as it indicates that the United States has abandoned that policy of isolation which explained its rejection of Mr. Wilson's treaties. Since it is inconceivable that the United States would make an empty gesture, the Kellogg proposal must be the sign of a change in American foreign policy."

Because of this the Kellogg proposal is accepted abroad as representing a moral if not a legal commitment. It is held to bind us to passive if not active participation in a war made by the League powers to resist a state which, in defiance of the Covenant of the League and in violation of the spirit of the Kellogg treaty, resorts to arms.

The only other earthly value of the Kellogg proposal, to the European mind—and it is a slight value—lies in the fact that, whereas the nations belonging to the League have already taken a more sweeping oath

to refrain from war, we have so far taken no pledge whatsoever. By this treaty, we are held to take, outside the League, approximately the same pledge the other powers have taken within the League.

Proof of all this lies not merely in the words of Sir Austen Chamberlain, but in all the European comment about the treaty and in all the continental construction placed upon Secretary Kellogg's proposed journey to Paris. Announcement of the Kellogg excursion was hailed on all sides as providing an opportunity for discussing the great problems remaining to be settled, of which the Dawes plan and the allied debts, together with evacuation of the Rhineland, are the most considerable. Europe heard with amazement that Mr. Kellogg proposed to do nothing but sign the treaty and come home.

This was the cause of immediate disillusionment with the Kellogg treaty itself. What was the use of any American proposal to outlaw war, Europe demanded, if the United States were unprepared and unwilling to give the treaty force? What real contribution could America make to the cause of world peace, if it were unprepared to associate itself with other powers in the removal of those precise obstacles which prevented consolidation of peace in Europe?

All this led Europeans to suspect that Mr. Kellogg's proposal was a domestic political maneuver, as not a few of its British and French critics had already charged. It was more and more generally accepted to have no other significance than an attempt to win Republican votes by exploiting European conditions. All the old denunciations of American egoism and selfishness were revived, and new point was given to the familiar talk of hypocrisy and pharisaism.

All of which means that Europe, having at the outset welcomed the Kellogg proposal as promising it material advantages, now condemns it as serving American ends exclusively.

Possibly I may be permitted to pay tribute here to the enormous service, in helping America to appraise European views of the Kellogg proposal, which has been rendered by Edwin L. James, European correspondent of the *New York Times*. His dispatches have, from the outset, provided an exact disclosure of the European mind in these negotiations.

In this country the Kellogg treaty has already become the subject of domestic debate, and a struggle in the Senate is forecast. In view of this it seems to me desirable to recognize that, to Europe, the treaty constitutes a moral commitment on our part. This European opinion is not altered by the fact that on several occasions Secretary Kellogg has said, justly, that the treaty does not bind the United States to any action against a power which violates it.

Moreover, to the European mind this is important beyond exaggeration, because hitherto Europe has recognized that any League action would inevitably be futile if the United States declined to respect it. Should the United States ignore a League blockade or insist upon its right to lend money and export war material to a country which had been put under the ban of the League, that ban would be of little use. Any insistence by this country upon these legal rights after the Kellogg episode would be held by all Europe, save the nation advantaged, as a repudiation of a solemn obligation.

It comes, then, to this: that after a full decade our second peace adventure in Europe brings us once more face to face with the fundamental difference between American and European conceptions of how peace is to be established.

At bottom this fundamental difference turns upon the fact that for the bulk of the people of the United States the problem of peace in Europe seems ethical, and therefore simple. This judgment is disclosed in the fact that American endeavor to promote peace has largely taken the form of missionary campaigns to establish

the crime of war, educational drives to emphasize the waste of conflict, and international negotiations to bring about formal renunciation of war.

These American efforts proceed from the assumption that the situation which exists is peace, that peace itself is the mere absence of war. Such a conception is not only natural but inevitable for the American mind, because in our own experience peace and the existing situation are identical. Possessing as we do liberty, unity and security to the greatest conceivable extent, we can see in war only a mad adventure or a criminal undertaking. That any American statesman, political party or sectional group should advocate war as an extension of national policy would seem to indicate depravity or imbecility.

No error among all the misconceptions which characterize American opinions of Europe is at once so common and so complete as this. On the basis of American conditions, we mistake the European *status quo* for actual peace, and assume the acceptance of existing conditions by all right-minded people in every country as the point of departure for pacific endeavor. In this assumption lies the basic American misapprehension of the problem of peace in Europe.

In reality, from the collapse of the Roman Empire to the present hour, neither Europe collectively nor any continental nation individually has known peace in the American sense. On the contrary each of the rapidly succeeding wars has been followed by a *status quo* tolerable only for the victors. Each of these situations, too, has been accepted on every hand as no more than a truce imposed by the might of the victor and the exhaustion of the vanquished—destined to endure only until its fortuitous balance of forces was destroyed.

Thus while American thought is directed toward discovering the means to preserve a peace actually possessed, European effort is concentrated upon the at-

tempt to transform a transient truce into an enduring system of order. Americans are seeking to preserve peace; Europeans are striving to find it.

Inevitably, the two endeavors are mutually incomprehensible. To the European the American thesis seems puerile and even preposterous, because the American point of departure is the destination of the European journey. To the American the European program appears not merely futile but actually insincere, because while ostensibly seeking peace, it begins by accepting the fact of war.

In spite of this American opinion, the slightest study of American history shows that the American conception of peace is founded upon assumption of the possession of both liberty and unity. That very Declaration of Independence, which is the great charter of our existence, is no more than a magisterial affirmation of the right of self determination, and of the moral justification of a resort to arms by a people deprived of liberty. Nor was our great Civil war a less definite and conclusive vindication of the right of a nation to defend its unity by force.

It is equally self-evident that for any people subject and separated the attempt of free and united nations to perpetuate existing conditions, under the name of peace, will appear as monstrous selfishness and supreme hypocrisy. It seems the deliberate attempt of nations which have won their own liberty and unity by war to bar the single door by which less fortunate races may acquire the same blessings.

No matter whether the means employed to protect the *status quo* be the League of Nations, defensive military alliances or treaties to outlaw war, they will appear immoral and without legal vitality to those races still denied liberty and union.

Not to perceive this truth is to ignore the essential fact in all European history from the downfall of Na-

poleon to the World war. For a full century the spirit of nationality released by the American and French Revolutions had been marching irresistibly across the European continent. From the outbreak of the Greek war of independence in 1820 to the arrival of the Bulgarian army at the Chatalja lines in 1912, nationalism had been systematically destroying the edifice built by the Congress of Vienna—the foundation of which had been denial of the right of self determination.

This nationalism had triumphantly challenged the Holy Alliance. It had successfully flouted the several evanescent Concerts of Europe. It had abolished the Turkish Empire in Europe. And at the very moment of the fatal crisis of July, 1914, Serbian nationalism in pursuit of unity was mounting to the assault of the crumbling walls of the Hapsburg Monarchy, while the immemorial demand of the Irish for liberty was threatening civil war in the British Isles.

It is in the perception of this problem of nationalism that one must discover the genesis of Mr. Wilson's Fourteen Points. These were based upon the assumption that for every dispute between races in Europe, there was a solution which would do essential justice to the rights of the nations concerned, and command the support of all their reasonable and right-minded inhabitants.

The fatal fallacy in Mr. Wilson's conception lay in the fact that for many of the most dangerous disputes between European peoples no solution is discoverable which does justice to the legitimate rights of both parties. Between the Baltic on the north and the Black, Adriatic and Aegean seas on the south, the various races of central and eastern Europe are so inextricably mingled that no system of frontiers is possible which does not condemn millions of people to live under an alien and hateful rule.

In national life there is a system of laws which prohibits resort to arms by the individual to enforce undoubted rights. It provides courts by which those rights may be vindicated or established. By contrast, every system of international peace so far devised by the wit of man begins by undertaking to abolish the single existing means of escape from patent injustice and unmistakable tyranny—war.

If the people of the United States are today agreed in regarding war as evil and foolish, it is because American aspirations have already found the fullest realization the mind of man can imagine. Conversely, if Europeans are agreed with almost equal unanimity in not accepting the American view of war, it is because many millions of them have not achieved that realization.

They fear that another war would prove the ruin of European civilization. Nevertheless they see eventual conflict as a wellnigh inescapable circumstance of their tragic destiny; for war still offers the single means of obtaining those rights which Americans acquired on the battlefield, and now proclaim as natural and inalienable.

Europe is at all times divided between states for whom the existing situation is satisfactory, and others for whom the *status quo* denies their primary rights. Both groups are equally aware of the horrors of war, and similarly eager to escape new conflicts. But the former are naturally opposed to any revision of the existing condition which would deprive them of liberty or unity; and the latter are equally resolved not to endure permanently a state which is intolerable.

When Woodrow Wilson went to Paris in 1919 to make peace, it was inevitable that the nations associated with us in the war against Germany should see in his coming the promise that the United States was resolved to put its gigantic resources behind the terms of the treaty of peace. To them it was a sign that we would

insure permanent peace by making the combination of forces against any nation seeking to change these terms too enormous to permit challenge.

When Mr. Kellogg proposed his treaty to outlaw war, all the satisfied powers saw in it the promise of a similar guarantee for their existing condition. In so far as the United States is ready to associate itself with the European peace endeavor, it must be prepared to join in physical action to prevent war, or to discipline the nation provoking war.

Since we continue to honor the statesmen and soldiers who by war established American independence and preserved American union, we are deprived of any warrant to invoke moral issues against either a people which sees in war the single means of obtaining these rights, or against a people for which the forcible revision of existing conditions would mean invasion of the same rights. Had Mr. Kellogg's treaty been in force at the time of the Revolution, American independence would not have been possible, since France would have been prevented from aiding the colonists. Had it existed in 1898, and had Spain been a signatory, we should have been compelled to see Cuba reduced to ashes and its people exterminated without our having the right to send a single soldier to intervene.

The problem of peace in Europe is the double one of preventing immediate conflict while discovering some method—if indeed any be discoverable—to reconcile the clashes between the inherent rights of all European peoples. These rights include not only liberty and unity, but also a decent standard of national living, for the economic problem also presses.

Unless some method other than war can be found to adjust these differences, the maintenance of peace resolves itself into a military alliance of the satisfied powers to preserve a *status quo*. Here one may point out that all European history confirms the conclusion

that while in the end such alliances break down, no people ever abandons its pursuit of liberty and unity.

The danger inherent in any American association with European nations, whether through the League or otherwise, lies precisely in the fact that such association might lead inevitably to the use of American power to maintain a *status quo* which can be preserved only by force. This would mean the discouragement of all efforts to find a real adjustment of racial differences. It must be patent that this objection applies equally to a treaty to abolish war forever, pending discovery of some alternative method of doing justice. The objection is the more potent if by proposing such a treaty the United States undertakes even a moral obligation to support the *status quo*.

Naturally neither the American people nor the American Congress would ever accept such an obligation as resulting from the Kellogg treaty. But European comment has already made it clear that Europe does attach such a meaning to the treaty. Inevitably Europe will, even if totally without warrant, see in the failure of the United States to carry out the treaty in a European way, proof of bad faith. We would be exposed to exactly the same storm of European criticism which attended our rejection of the Treaty of Versailles.

THE PARIS PACT¹

In the Kellogg treaty renouncing war is found one unusual merit, that of *brevity*. Even the casual reader will not be bored by reading its exact language:

The high contracting parties solemnly declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

The high contracting parties agree that the settlement or solutions of all disputes or conflicts, of whatever nature or of

¹ By Oscar T. Crosby. *Advocate of Peace*. December, 1928.

whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

What an impression of finality in these two short paragraphs! But alas! Mr. Kellogg's facile brevity is deceptive. It is too long for clarity by all that follows the words "renounce it." If the plan ended with these two words, we should have a renunciation of *all* war. It does not end there. Observe that we "*renounce it as an instrument of national policy.*" What does this limitation mean? The word "policy" suggests a settled rule of conduct. May war then be waged as an *exception* to the rule, when it is not an instrument of policy? And when is war not an instrument of national policy?

We find no answer to these questions in the text of the treaty. But there are certain extra-textual letters between Secretary Kellogg and various foreign ministers.

Before consulting these, however, let us glance at the second paragraph of the treaty cited above. Note that "solutions of *all* disputes and *conflicts* shall never be sought except by pacific means." A "dispute" is one thing, a "conflict" is another; else why the two words? Does an attack upon one's national territory give rise to a conflict? One would say it does. Then, apparently, we are not to seek a solution of that conflict by resistance in arms, but by pacific means. Does the plan contemplate that we surrender the right to repel force with force?

Another question raised at once by the text is presented in the word "sought." We are not held to find solutions by pacific means, but to seek them. And no institution is established by the treaty for settling disputes. Yet the lack of a tribunal and a sanction for its decrees is the general condition of all international wars, whatever may have been the motive cause of any particular dispute. Will the correspondence throw light on this apparent inattention to a basic fact in human experience?

Having extracted from the treaty proper a number of interrogation marks, let us turn elsewhere for positive statements. We learn from the pronouncements of all the ministers that something called the right of making war for self defense is not to be affected by the treaty. Mr. Kellogg says this right is "inherent in every sovereign state and implicit in every treaty." But he thinks the words are so difficult of definition that it would be unwise to introduce them into the official text. It seems to him not unwise to introduce them, and without clear definition, in official correspondence anent the treaty. And it is made plain by the assenting ministers that their acceptance of the treaty is based upon this correspondence. Therefore, these difficult words must be interpreted if the treaty is to be understood. Sixty or more judgments of sovereign states must be registered in words or in deeds regarding every future act of war.

Doubtless senators, before ratifying so momentous an engagement, will ask themselves whether or not they are also ratifying a dozen or more variously expressed diplomatic letters in which this phrase "self defense" is of prime importance. Every citizen also may reasonably search for a meaning of that which he retains in the commentaries on the treaty and of that which he renounces in its text.

Let us now start the inquiry.

WAR POWERS RETAINED

Mr. Kellogg has said: "Every nation is free at all times, and regardless of treaty provisions, to defend its territory from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self defense." Note that the only clear example given of the inherent right of self defense relates to actual attack or invasion of *territory*.

Is that, then, the new meaning of the phrase? Perhaps not, for in the last clause of the sentence just quoted an opening is made for a more elastic definition. No nation can be supposed to hesitate in making war to repel attack or invasion of its territory; there can be no "whether" about this. It may, however, exercise its "sole competence" to decide whether certain other cases fall within the accepted definition of self defense—that is, of defense of certain rights other than mere territorial lordship. Is it in this clause that the door is opened to other rights that may be defended by war?

Examples from our own history will aid the inquiry. Our territory was not actually invaded in various Indian wars; in the Tripolitan war; in the Algerian war; in the undeclared maritime war with France; in the War of 1812; in the war with Spain over Cuba; in the recent war with Germany. In our declared war with Mexico both parties invaded a territory claimed by each; hence, in the narrowest sense, that war may, perhaps, be called a war of self defense—for both belligerents.

Now may not a citizen reasonably ask whether or not we are about to "renounce" the right to fight under conditions that led to nearly all the wars we have actually waged? Is the Mexican conflict the example of the only kind of war we are now permitted to wage? Or, on the other hand, would the other cases be let in by the "weasel words" of the clause declaring our "sole competence to decide," etc.?

May we not go further and ask generally whether or not all the signatories have renounced the right to make war when there has been destruction of or injury to the property and lives of their citizens lawfully sailing on the high seas or lawfully established in foreign territory; when there is a gathering of menacing armies on their borders or of menacing fleets in or near their ports and a refusal to withdraw such forces after protest; when there is a patent denial of or serious inter-

ference with their trade, whether in the country of the adversary or in that of some weak government—China, for example; when some foreign power incites rebellion among their own citizens; when there is an extension, or threatened extension, of foreign control over territories where the signatory claims special interest, as in our case, under the Monroe Doctrine, over countries to the south of us. Many recent wars have been rooted in one or more of such situations. Most of these wars have been declared as founded on “self defense,” on defense of rights held as vital to the power claiming them.

Usage fixes definitions of words and phrases. In the documents under consideration, does the phrase “self defense” appear in its usual significance or in a new one?

Respecting the last case, it is to be remembered that “understandings like the Monroe Doctrine” are enshrined in the Covenant of the League of Nations, and that Covenant is declared by the signatories who are League members to be inviolate. Several European and one Asiatic government claim “Monroe Doctrines” applicable to vast areas throughout the eastern hemisphere. Secretary Kellogg has accepted the Covenant as being harmonious with his proposition, and is reported as having given specific assurance to the press that our Monroe Doctrine is untouched. Take all these declarations together, they mean that the great powers do *not* “renounce war as an instrument of national policy” when it comes to defending a network of special interests claimed in many lands not their own.

Sir Austen Chamberlain, in his letter accepting the treaty, expressed in straightforward language his government’s rejection of the renunciation in respect to a British Monroe Doctrine. He says:

As regards the passage in my note of the 19th of May relating to certain regions of which the welfare and integrity constitute a special and vital interest for our peace and safety, I need only repeat that His Majesty’s Government in Great

Britain accepts the new treaty upon the understanding that it does not prejudice their freedom of action in this respect.

Now, if the theory of self defense is thus plainly set up as applying to indirect interests in foreign lands, how much more will it apply to any of the other cases in which direct injuries to national peace and safety are involved?

Thus there is established a doctrine standing outside the renunciation treaties but controlling them—a doctrine broad enough to permit the making of war *in substantially all the familiar cases known in the past*. Verily this new straight-jacket is made of rubber and of gauze!

WAR POWERS RENOUNCED

There are different kinds of wars: those of self defense, which we do not renounce by the new treaty; those waged to comply with the terms of an alliance, where A may declare war against B, though B is at first not in conflict with A, but with C, A's ally.

We are not now directly concerned with alliance wars. All members of the League of Nations are deeply concerned. They are in agreement with each other to fight punitive wars under given contingencies. And they have, in their letters accepting the Kellogg pact, made it clear that their League obligations in this respect are not to be affected by the pending engagement. They thus extend the definition of "self defense" to include alliance wars, or they inferentially exclude these wars from the scope of "national policy." Strange conclusions! Unless we also make it clear that alliance wars are accepted by us as being outside the renunciation, then we—we as a state not in the League—are now about to cut ourselves off from the right to make such engagements in the future. I hope we never shall; yet, if we are to yield the *right* to do so, this should be understood. We may or may not have made this particular renunciation in the pending treaty.

There remains the war of aggression, of unprovoked attack. This is the thing actually renounced. We promise that we shall not become marauders, at least in our own judgment. We refuse to be judged by others in any formal way. There the matter stands.

OUR RELATIONS WITH THE LEAGUE OF NATIONS

We have now before us the dimensions of the "grand conception," ingenuously announced by Mr. Kellogg as having flowed from his recent negotiations with Mr. Briand. It is the same conception which appears in the opening paragraph of the Covenant of the League of Nations. The members of that League accept "the obligation not to resort to war." This is more conclusive than the renunciation in the Kellogg pact. Many provisions following the fundamental engagement have to do with the organization of bodies for hearing and settling disputes or for actuating punishment of violators of the pact. No loophole is left for beginning war without previous submission of a threatening dispute to an indicated authority. In one contingency, namely, failure to obtain a stipulated proportion of votes for a decree of settlement, the parties are freed from further obligation to refer to the League organization. But the loophole thus left for war-making does not free the parties from punishment if the war then undertaken be judged by the members as one of aggression. In that case the guaranties of Article x come into play. The culprit must take into account the possibility of combined or separate constraint by other members, acting not only within their right, but within their duty under the Covenant.

With the conditions *inter se* imposed upon themselves by the members of the League we are not directly concerned. But the Covenant goes further. It attempts to impose a discipline upon non-member states. With this part of the Covenant we will be involved as never before.

The League members are solemnly pledged to constrain us by whatever means be necessary in the following cases:

First. If we are in dispute with any other nation, whether member of the League or not, and fail to make an amicable settlement, we must be invited "to accept the obligations of membership in the League for the purposes of such dispute." If we refuse the invitation and "resort to war against a member of the League," then we are to be sent to Coventry, to be denied any intercourse whatever with the rest of the world. Not only our government, but each and every one of our nationals. These punishments flow from the mere refusal of the invitation, if followed by war against a member state. Nothing is said about our claim of self defense. That is the very matter which, by presumption, we have refused to submit to inquiry.

Second. If a member state is held to have resorted to war in disregard of its covenants, it shall likewise be denied intercourse with all the world—that is, with member and non-member states—with us. Let us particularize such a case. Let us consider any country with which we have peaceful relations—Italy, for example. By mutual agreement the enjoyment of rights of commerce, of residence, of travel, are guaranteed by each government to the citizens of the other. Thousands of Italians are united to thousands of Americans by ties of sentiment, of business interest, of scientific comradeship. Thousands are established as residents in an alien but friendly territory. Then, in some obscure Balkan or Asiatic or African territory, an imbroglio ends in a war between Italy and another state. We are not directly concerned. But the League Council takes note. The usual line up of interested parties is quickly made. A few great powers, acting hastily (they *must* act hastily if at all), stigmatize Italy as having violated her League obligations. If unanimous in the Council, they under-

take a judgment from which the Muse of History recoils. Italy is outlawed. And lo! *we* must play traitor to our Italian treaty of amity and commerce. Our Italian neighbors, living next door, must be deported. Our cousins who are traveling or residing in Italy must come home. No speech, no letter can be exchanged between any American and any Italian. The League has *undertaken* to bring this about. The League members who have accepted the war renunciation treaty with us (while holding to the Covenant) have thus reserved to themselves the right to call us to this dishonor to Italians and to this wrong to thousands of our own people. And if we do not submit? Mr. Kellogg says: "The League has imposed no affirmative, primary obligation to go to war. The obligation is secondary and attaches only when deliberately accepted by a state." But, if the League fulfills its engagement under Article xvi, must it not *enforce us*, in the case outlined, to do vast injury to all Italo-American interests and to our good faith toward Italy, unless we "voluntarily accept" a rôle of dishonor dictated to us by the League? Is not this an affirmative primary obligation to subject non-member states to the will of the League, and is not war involved if they stand in defense of their own rights and honor?

Now all these threats against the independence of non-member states existed before the new treaty was heard of. That treaty, in its own texts, introduces no new element in that situation. The novelty arises from the fact that, in so far as Mr. Kellogg can speak for us, we seem now to have declared that a war against us by League members, waged to overcome our resistance in the cases just discussed, would not be the kind of war that is renounced by them. By implication it would be a war for *their* self defense—of defense of their obligations and interest as bound up in the League. Could we, then, make resistance without exposing ourselves to the charge that we are the treaty-violators?

We deal with them *after having taken official cognizance* of the Covenant requirements and having declared them innocuous.

Whether or not Mr. Kellogg fully appreciated the scope of the Covenant provisions affecting non-member states, I do not know. Certainly, however, it was a triumph of European diplomacy so to engineer the negotiations as to destroy our previous position of aloofness. M. Briand knew that it would be useless to propose that we join the League. But might we not be tied to it? And we will be if the pending treaty, with its penumbra of reservations, be ratified.

PACIFIC SETTLEMENTS

League members are already bound to seek pacific settlements of all threatening disputes, through the League machinery if other means fail. We are similarly bound with respect to those nations who have signed our Wilson-Bryan cooling-off treaties. But these specifically reserve the right to resume freedom of action in case the findings of a commission (provided in the treaties) are not accepted by the parties, who are in no way bound to accept them. The new treaty sets up no new machinery. Let us suppose, then, that in some of our disputes the cooling-off treaty is invoked. The commission findings are not accepted by both parties. A year or more has elapsed since the steps of submission began. "Liberty of action" is resumed by the contestants, as set forth in the treaty. But, under the Kellogg pact, liberty to make war is *not* resumed, unless we declare that self defense requires it. There is *pro tanto* an abrogation of the cooling-off treaty. Following close upon its failure must come the invitation to submit the dispute to the League. If we accept, more delay. If we refuse, while still refraining from making war, that also means delay. Now, many people have come to believe that delay is in itself a sort of panacea for war.

In some sense it is. But it will often mean defeat for one or the other of the adversaries. It will mean a surrender of the alleged *casus belli*—a consummation of the threatened wrong. History would be reversed if indefinite delay ruled our actions. The starving Cubans die—Spain wins (1898). The oppression of the Uitlanders is completed—the Boers win (1898). Our stricken commerce perishes—England wins (1812). The Port Arthur fortifications rise to completion—Russia wins (1904). A hundred similar cases may be cited. I do not say that the world might not have been better if pacific settlement had been reached in the cases. It is sufficient that we see clearly what it means to be committed to *indefinite delay*. It means submission to alleged wrong. 'Twere better then formally to revive the Sermon on the Mount as "an instrument of national policy." Then no tiresome treaties would be needed, but perhaps the ruffian would triumph in the world.

TRIBUNALS

Mr. Kellogg stands firmly against the idea of submitting a self defense claim to any official, organized tribunal. Announcing positively that we are not prepared to enter into such an arrangement, he goes further, saying: "I do not believe the United States or many nations in the world would be willing to submit to any tribunal to decide the question of whether a nation had violated this treaty . . ."

Yet that is, in effect, just what League members have done in adopting the Covenant. Nay, more, they impose a judgment on non-member states as well. In Article x, in Article xvi, in Article xvii, action by the League Council is made mandatory, whether the dispute or the war in question involve members only or non-members. It is, indeed, probably true that quick repelling by force of an attack upon territory is by inference left

to every state, but its action is subject to inquiry and review by the Council.

To this procedure Mr. Kellogg prefers another course. He says: "If it (a belligerent claiming self defense) has a good case, the world will applaud it and not condemn it, but a nation must answer to the tribunal of public opinion as to whether its claim of self defense is an adequate justification for it to go to war."

What an opportunity for the paid propagandist! And how will this applause or condemnation find expression? Through the press? What power for the half-dozen great newspaper proprietors who supply the daily reading matter for many millions of us!

If not this, then will governments speak? And will they applaud or condemn? And will the mere applause or condemnation of mobs or of governments silence the thundering cannon of the foes on a distant battlefield? Must not some material act be performed by government in order that this appeal to the bar of world opinion should aid the "good" cause? And if one neutral applauds A and another applauds B, must not a beneficial demonstration of this contradictory applause result in a widening of the circle of war?

Now I do not believe that we would be willing to risk our national welfare because in the welter of a foreign war our government had hastily concluded that A had a good defense case and B a bad one. But if we do not do something of the kind, then why this bother about justifying to us an act claimed by the belligerents as one of self defense?

THE PUNISHMENT

But, says Mr. Kellogg, a judgment by us that A has a bad case will at once deprive him of the benefit of the new treaty with us. That is to say, we resume our

right to make war on him, not in self defense, but merely as aggressors or as self-appointed chastisers. Our famous renunciation is itself renounced. And is this precious right, if not exercised during the existent hostilities, to endure forever, or until a new renunciation takes place? Even if the two belligerents make peace and swear to love each other thereafter, are we to stand as a perpetual menace to the one we had adjudged as an "aggressor"? Now, we hotly deny that we will ever become marauders. Then, the thing actually resumed is the right to *punish*. That brings us squarely within the spirit of the League Covenant. The meddlesome Mattie rôle which we have refused since 1919 is now undertaken by indirection. There we must stand or the denouncement of the treaty with any future offender will be meaningless to both parties. Well, if we want to take that position, let us do so in clear words, understood of all.

FUTURE ARMAMENTS

If, after signature of the new treaties, the powers maintain any armaments suitable for foreign wars, they must do so assuming that one or more of them will attack somebody. We may be reasonably sure that such an act will not be described by the perpetrator as being in violation of pledges made. It will be charged, mutually, that "the other fellow started it." Or, again, the initial violence may be declared by its perpetrator to be not real war, but only some species of "near-war," not the kind covered by the renunciation. We denied that our capture of Vera Cruz in 1914 was war. The British in 1812 and the Germans in 1917 declared that their seizure or destruction of American persons and property on the high seas was not war, while we declared it was. In some such fashion hostile actions may grow over

night into full-fledged war. Question: Are the renunciation signatories to prepare for such contingencies? The British War Secretary does not hesitate to say (speaking in the House of Commons July 19, 1928) that *his* Government will always be prepared to defend the liberties of British subjects. Our recent official pronouncements speak the same language.

And if some naive persons, controlling national policies, should disarm, with or without agreements, what would be the results? Supremacy would at once pass to that state having the most powerful commercial fleet, on the water and in the air. Quick installation of arms would permit that state to impose its view on every foolish virgin adversary. So it seems fair to conclude that the new treaty will not in any way affect the awkward efforts now being made for limiting armaments.

OUR CONSTITUTION

An apparently plenary power to declare war is vested in Congress by our Constitution. The pending treaty on the face of it attempts to abridge or destroy that power *in toto*. Through extraneous documents and by implication, we learn that a wide power of waging war for self defense and for punishment is reserved to the signatories. Is that limitation to be inferred as already existing in the Constitution? If so, we renounce nothing except the exercise of illegal powers. We merely say, in the Kellogg pact, that our President and members of Congress will support the Constitution, will observe their oath of office.

If the limitation is not to be inferred, then the treaty attempts to amend the Constitution—a thing Mr. Kellogg would not hold possible. It is not probable that in the Senate there will be found any champions of a rigid observance of the Constitution; yet it would be well that the point should be discussed.

MORAL GESTURE

Much (not all, I believe) of the criticism here made of the Kellogg treaty has already appeared in print. The approval of it has boiled down to this: "It is a fine moral gesture."

Is it moral to make engagements understandable only by reference to extraneous text?

Since war as "an instrument of national policy" is prohibited, and war as an instrument of national self defense and of punishment is *not* prohibited, have we not made "national policy" mean only "aggression"—wanton attack, robbery? Is this not a violation of the usual meaning of the term "national policy," to exclude from it defensive and punitive wars? Is it moral thus to violate language in a solemn engagement?

WHAT NEXT

Few readers will be satisfied with mere destructive criticism. The thing has gone so far, the national dignity is so much involved, that we must now ask, "What shall be done about it?" Is there a way out? Yes. Let the Senate amend the text by making it read: "... and renounce it (war) as an instrument of national policy in their relations with one another, save in case of self defense, as that case may be judged originally by the party concerned, and in the case of punitive wars against a nation making an unprovoked attack upon another, as that case may be judged by the party desiring to punish, or by any international organization to which the right of judgment may have been committed by treaty."

In 1915 Mr. Bryan, referring to the cooling-off treaties, said:

I believe that a thousand years from now the name of Woodrow Wilson and my name will be linked together in the capitals of the world, and that these treaties will preserve the peace of our nation by furnishing machinery by which peace can be preserved with honor.

Mr. Bryan's treaty was at least clear. I doubt its efficiency. Mr. Kellogg may entertain a laudable ambition that his name and that of Mr. Coolidge should share in the millennial glory predicted for their predecessors in office; but if that ambition is left to rest upon a treaty that is not clear, the angels may withhold the crown.

THE AMERICAN PEACE PROPOSALS AND THE BRITISH REPLY^a

The publication, in April last, of Mr. Kellogg's suggested peace pact has definitely lifted the American proposals out of the sphere of the academic into that of immediate and practical politics. Great Britain, through her Government, has to show by the answer she gives what her policy is to be in this urgent and most momentous question.

My own view is that the British Government ought to sign the pact without reservation, amendment or delay; I say this although I recognize that there are grounds on which some honest hesitation is possible. First, the extremely general wording of the American draft constitutes an undoubted difficulty to British opinion, which always hesitates to undertake general and indefinite commitments, however unobjectionable, and has therefore usually refrained from laying down general principles in legislation in anticipation of positive enactment. On the other side, even setting aside reasons connected with the peculiar character of the American Constitution, there is solid ground, arising from the character of international law, for giving the pact this general form. International law, unlike municipal law, cannot usually go deeply into detail. The want of an organized international legislature makes it impossible to draft instruments for the regulation of international relations which shall be comparable to a British statute. All that can be

^a By Lord Cecil of Chelwood. *Spectator*. July 7, 1928.

done is to lay down general principles, which is one reason why any far-reaching codification of international law is so difficult.

The indefinite right of war, although limited by the provisions of the Covenant, still exists. It enables any state to use the threat of war in disputing with a weaker neighbor; it instils force as the only ultimate appeal in international affairs. Its indirect effect is more important still. So long as the right of war exists, even limited as it is today under the Covenant, even though it is only to arise in certain contingencies, every government must reckon with it. No state can ignore it, and consequently each must make such national preparations, by armaments and alliances, as will save it from the consequences of a possible exercise of this universal right. To abolish the right of war would thus be a most important step in the progress of mankind. That right is a real obstacle to assured peace. And since it is indefinite and general in character it can only be abolished by a formal enactment, such as President Coolidge has proposed.

Another objection to the generality of the American proposal is less respectable. There is at least a suspicion that some of the states addressed have in their replies desired to retain the right of war in certain cases. Thus Article 10 of the British reply has been interpreted as seeking to establish a British Monroe Doctrine prohibiting "interference" in certain cases. The countries meant are presumably Egypt and Afghanistan and probably the Arabian states, including Mesopotamia and Palestine. The expression "interference" is harder to interpret exactly. Some phrases in the article in question seem consistent with a very wide interpretation of the treaty, including perhaps any questions of political influence of a foreign power in those regions. If it were meant that the British Government reserved the right to go to war in cases of interference in that sense, that would be

a very serious and perhaps fatal blow to the whole project. It would be comparable to the reservation of matters of honor and vital interest in arbitration treaties. To renounce war only in cases of minor importance is to refuse to renounce it at all. If Great Britain reserved certain questions in the manner indicated, other nations would undoubtedly do the same, and the renunciation of war would be reduced to an empty and meaningless formula.

This article can, however, and more reasonably, be interpreted otherwise, as meaning simply that an attack on such countries would be equivalent to an attack on the British Empire. With respect to countries at present occupied by British troops, such as Egypt and the Arab countries, this is obviously true. In other cases the position is different. A statement that an attack on a frontier state such as Afghanistan would be regarded as equivalent to an attack on ourselves would not, in principle, be absolutely fatal to the idea of renouncing war, but it would seem most undesirable, both as gratuitously adding to our own responsibilities, complicating the negotiation of the pact, and doubtless leading other countries to make reservations which the authors of the pact might not regard as reasonable.

Other objections which have been raised now seem less substantial. The argument of self defense has been met by the American statement that the renunciation of war will only operate as a reciprocal obligation, and therefore any aggression will liberate all the other signatories from their obligations thereunder. The absence in the pact of machinery for settling when and how its provisions shall come into operation is, however, a real incompleteness which may prove important where the machinery of the League is not available. It is difficult, as has often been proved, to decide whether one state has been genuinely threatening war against another—for instance, by massing troops on the frontier—thus

justifying the other party in taking measures of self defense.

The suggestion that the provisions of the Covenant, or of Locarno, may be threatened, can be met by the same answer, or by a better answer still. The Covenant aims at securing peace. It contemplates coercive action, where at all, only against countries that in defiance of its provisions have broken the peace. It regards nations, for the first time, as a civilized community, all members of which have the duty to combine to prevent and punish a breach of the peace. If in extreme cases war is necessary for this purpose, such war is an instrument of international, not of national, policy, as distinct from the other as the action of a policeman making an arrest is from the commission of an assault by one individual on another. Had the American draft wished to forbid such war as a measure of international coercion, it would not have expressly limited itself to the renunciation of war as an "instrument of national policy."

The objections to the American proposals do not, therefore, upon examination, appear substantial, while the advantages of their acceptance would be immense. The elimination of the right of war would, provided the renunciation were genuine, change at one blow the whole basis and aspect of international relations, which today are largely founded on mutual suspicion. Further, it would provide a basis for further progress in the direction of arbitration, since an alternative to war as a settlement of international disputes would have to be found, while the best objection to compulsory arbitration—that it removes the right to secure justice by force—would be gone, the application of force having already been renounced. Similarly, the renunciation of war would make disarmament a much easier problem.

Another advantage coming to the world from acceptance of the American proposals must not be ignored. Without committing herself to any promise, implied or

expressed, to undertake any active obligation for peace, America has in this pact recognized that she possesses a grave interest, material and moral, in the preservation of world peace, a recognition which will almost necessarily be accompanied by abstention from any interference with honest efforts by other nations to preserve peace according to the obligations which they have undertaken. For these and many other reasons—as, for example, that the solution of our long-standing difficulties about the freedom of the seas will be greatly facilitated—it is of the utmost importance that we should accept the American proposal, not only as constituting an immediate step forward in the organization of international peace, but also as giving promise of further progress, particularly in the direction of arbitration and disarmament.

THE PEACE PACT⁹

The signature of the peace pact is, of course, only a beginning. An immense amount will have to be done to implement it before the outlawry of war and the reign of true international law can be said to have begun. Before, however, we proceed to consider the problems involved it is necessary to devote some attention to the interpretative declarations of the meaning that they attach to the pact which have been made by the American, British and French Governments.

The first point relates to the right of self defense. It was raised by M. Briand, and dealt with by Mr. Kellogg in a speech before the American Society of International Law as early as April 28 last, and what the American Secretary of State then said was afterwards quoted by him in the official dispatch, under cover of which the final draft of the pact was circulated for acceptance by the other powers. Mr. Kellogg's words were as follows:

⁹ *Round Table*, September, 1928. Published by Macmillan Company. The first section of the article is omitted.

There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self defense. That right is inherent in every sovereign state, and is implicit in every treaty. Every nation is free at all times, and regardless of treaty provisions, to defend its territories from attack or invasion, and it alone is competent to decide whether circumstances require recourse to war in self defense. If it has a good case the world will applaud and not condemn its action.

Express recognition by treaty of this inalienable right, however, gives rise to the same difficulty encountered in any effort to define aggression. It is the identical question approached from the other side. In this respect no treaty provision can add to the natural right of self defense. It is not in the interest of peace that a treaty should stipulate a juristic conception of self defense, since it is far too easy for the unscrupulous to mould events to accord with an agreed definition.

It has been said that this interpretation, emphasized by the British, French and other Governments, nullifies the value of the pact. It is certainly true that there has never been a war in which every party did not plead that it was acting in self defense, and it is easy for any power, whenever there is a menace of war, to plead self defense as the justification for any action that it may take. On the other hand, the right to repel an attack is a legal right not only of nations but of individual citizens in civilized states, and the retention of such a right need in no way impair the value of the pact. The essence of the distinction lies in this. Inside civilized states every individual has the right to defend himself against attack, but he has none to indemnify himself for damage done, or to impose his own settlement of the dispute, by force. After repelling the attack he must still submit the issue and the question of damages to impartial adjudication and justify his own use of violence. So it ought to be with the nations under any system which outlaws war. Mr. Kellogg's reservation is obscure. It says that every nation is free at all times "to defend its territories from attack and invasion." That in itself is harmless. But he also says, as other powers say, that "it (*i.e.*, such a nation) alone

is competent to decide whether circumstances require recourse to war in self defense." That sentence in itself is capable of being read in such a way as to nullify the whole pact. The question of self defense obviously requires clearing up. The solution, however, is not to redraft the reservation about self defense, but to make it clear that even in the event of a forcible collision in the name of self defense, in the final resort the verdict is to be determined not by the might of the stronger but by pacific means in which reason and justice, impartially applied, are the deciding considerations.

It is much the same with Sir Austen Chamberlain's reservation about the special regions in which the British Empire has a vital interest. Sir Austen's actual words were as follows:

The language of Article I, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your Excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.

This reservation clearly refers to the Suez canal, the Persian gulf and to territories for whose government, though they are not actually part of the Empire, Great Britain is responsible. In so far as the meaning of Sir Austen's words is—and this in all fairness seems to be their obvious interpretation—that the British Government would regard "interference with these regions" by other

nations as a violation of the pact giving it the right to use force for "their protection against attack," the reservation is harmless. But in so far as they are capable of being held to give Great Britain the right of using war as an instrument of her national policy in order to alter the boundaries of, or to extend these regions, they would obviously nullify the pact. The Foreign Secretary on July 30 told the House of Commons that his reservation was "a pure measure in self defense." The further question of how far this reservation would warrant Great Britain resisting legitimate demands for the right of self government by peoples for whose welfare she has made herself responsible in those regions will be discussed later.

The last interpretative declaration, made by all the European powers, relates to the Covenant and the Locarno treaties. This question is one that has already been discussed in this review. Are the Covenant and the Locarno treaties primarily instruments for the settlement of international disputes, or are they primarily instruments for the enforcement, if need be by war, of the treaties of peace? The French, the Belgians and the powers of the Little Entente have hitherto, on the whole, taken the latter view. Great Britain, Germany and the neutral states of Europe have, on the whole, taken the former one. In our opinion the signature of the peace pact will greatly simplify the problem by dispelling the antithesis between the two. For the essential consequence of the peace pact must be that nations renounce the right to resort to war to alter the *status quo* created by the treaty, but they reserve the right to try to alter it by pacific means, *i.e.*, by the means prescribed by Article 19 of the Covenant and Article 2 of the pact. Both the Covenant and the peace pact, therefore, are, in effect, guarantees that the treaty settlement will not be altered by war. But the value of these guaranties clearly depends upon the effectiveness

of the procedure which is set up for making such alterations in the treaties as reason and justice may show to be necessary by peaceful means, for if there is no effective peaceful alternative to war, war itself will in due course inevitably reappear.

It is obvious that if the new movement for the outlawry of war which has been launched by the peace pact is to be really effective, the nations will have to do three things. They will have to prohibit and renounce the use of war as a way of settling or of accomplishing anything in the international sphere. They will have to create alternative means, judicial and political, by which international disputes and problems of every kind can be quickly settled in accordance with reason and justice. And, thirdly, they must be prepared to maintain and to use force in some form for police purposes. This force, indeed, ought to be such that no nation, however strong, could hope to be able to take the law into its own hands and to impose its will by violence instead of resorting to pacific modes of settlement.

The peace pact—as we have already said—is only a beginning. There is clearly a very long road to be travelled before the reign of law, the goal which it sets before us, can be reached in practice. Its supreme value is that for the first time in history it unites all the most civilized nations in an effort to establish peace in the international sphere on the same principle as has at all times preserved it within civilized states. It may be useful, therefore, in conclusion to examine briefly some of the problems which lie ahead.

The first and most obvious problem is to make Article 2 of the peace pact, *i.e.*, the undertaking to use only pacific methods for the settlement of international disputes, effective. War in modern times is not usually due to predatory or malignant motives. It is the inevitable method which nations adopt to remedy an intolerable evil or to achieve what they believe to be a

rightful aim, when no other way of effecting either purpose seems to be possible. If respect is to be ensured for Article 1 of the pact, *i.e.*, the renunciation of war, it will only be because an alternative procedure has been developed which will in practice result in the righting of wrong and the alteration by pacific means of the political structure of the world in such ways as time may show to be necessary sufficiently promptly to leave no nation with any justification for trying to take the law into its own hands. The renunciation of war will have no effect if it simply proves to be a way of stabilizing the *status quo* and of resisting all progress and attempts to get grievances remedied.

The Covenant of the League creates an elaborate and well-designed machinery for the pacific settlement of international disputes between its members. This machinery includes the Court of International Justice at the Hague for the trial of justiciable questions, and it provides for arbitration, conciliation, mediation or investigation and report by the organs of the League. When the outlawry of war is added to this list the League machinery will be wonderfully complete. But the Kellogg proposal contains no indication of what the United States proposes to do to make Article 2 effective. She has signed the Bryan treaties, by which she binds herself to submit disputes with some twenty-one other nations to an international commission for investigation and report. She is, therefore, committed to the same general procedure as is made use of by the League. But it would be a profound mistake to suppose that the ratification of the pact means that the United States proposes to join the League of Nations, or to take any other dramatic step forward in international association. Ratification must inevitably lead to a re-examination by public opinion in the United States of its attitude to existing international organizations. But all the evidence goes to show that ratification will not mean the accept-

ance by the United States of the responsibility for solving the internal problems of Europe which was so decisively rejected at the polls in 1920. The United States is much more likely, after the fashion of English-speaking peoples generally, to reject legal and constitutional commitments of any kind and to feel her way towards active cooperation in the pacific settlement of international questions, as opportunity and necessity dictate from time to time. The eventual outcome of the pact may even be some regional reorganization of the League system under which Europe, the British commonwealth, Pan-America and the Orient would become separate regions primarily responsible for their own affairs, and the world league would only take cognizance of world problems or of threats of war—for war, wherever it may break out, is a world concern.

The most difficult problem, however, relates to what have come to be known as sanctions. All history has hitherto shown that while the basis of civilized peace is the voluntary obedience of citizens to the law, the reign of law crumbles and disappears unless compulsion is brought to bear upon the minority which would otherwise ignore or disobey it. Police force—and sometimes it has to be backed up by military force—has never yet been dispensed with in human society. Nor is there any reason to suppose that the outlawry of war or the Covenant of the League will make unnecessary the use of force in the international sphere. The problem of finding a sanction for international good conduct and therefore for the security of the member states of the international family is the root problem of international peace. If it could be solved the establishment of international judicial and political organisms, which would command respect and so make armaments and the residuary right to use them superfluous, would be comparatively simple.

The importance of the question may be shown in two ways. It is precisely because war is the ultimate court of appeal that international problems are so difficult to solve today. In every international dispute there are two separate and conflicting questions. One is the merits of the case; the other the effect of any proposed solution on the balance of power or the strategic security of the different nations. The provisions forbidding the *Anschluss*—the union of Germany and Austria—were inserted in the Treaty of Versailles not because anybody wanted to prevent Austrian-Germans and German-Germans from becoming one political family, but in order to prevent six million Austrians from being added to the potential military strength of Germany, and the military frontier of Germany herself from being pushed forward into the heart of the Balkan peninsula, which would enable her to dominate the whole of eastern Europe. The reason why Great Britain or the United States or France view the acquisition of territory across the seas by Germany, Italy or Japan with the utmost suspicion is not because they object to their obtaining outlets for their surplus population, but because such territories might be used as naval or military bases, and so alter the balance of power or their capacity to make sure that if an international problem should be put to the test of war, their will and not that of their opponents would prevail.

Again, the real basis of the political stability of Europe today is not the League of Nations but the fact that there is an overwhelming superiority of armaments in the hands of France, Italy and the Little Entente behind the political settlement made in 1919, with the Locarno obligations of Great Britain in the background. The only alternative to the system of peace which depends on the preponderance of one side or the other—a very precarious system at the best—is a true balance of

power such as existed before the war and ended with the war, or else an effective guaranty that the constitutional *status quo* cannot be successfully altered by war but only, if reason and justice show it to be necessary, by pacific means—in other words, by the method implicit in the outlawry of war.

The core of the problem of how the peace pact is to be made effective lies, therefore, in finding the means by which the nations can be given a real guaranty that international problems affecting themselves shall not be settled by war, for only in so far as this is done will it be possible to ensure their being fairly and wisely settled by pacific means. It was the Locarno guaranty by Great Britain and Italy which alone made effective the other Locarno treaties pledging Germany, France, Belgium, Poland and Czechoslovakia to settle their disputes only by pacific methods. As Sir Austen Chamberlain said on July 30, it will be the knowledge that the United States intends to throw her whole strength into the scale against the successful use of war as an instrument of national policy which will make the peace pact effective.

That leading people in the United States are beginning to recognize this to be true may be seen from a statement made by Senator Borah, the chairman of the Foreign Relations Committee of the Senate, to the *New York Times* (March 3, 1928). One important result of the proposed treaty, said the senator:

would be to enlist the support of the United States in cooperative action against any nation which is guilty of flagrant violation of this outlawry agreement. Of course, the Government of the United States must reserve the right to decide in the first place whether or not the treaty has been violated, and, secondly, what coercive measures it feels obliged to take. But it is quite inconceivable that this country would stand idly by in the case of a gross breach of a multilateral treaty to which it is a party.

It is quite certain, however, that the United States will not commit herself to use force as a sanction at

the bidding of a treaty or of international law. The whole tendency inside the League since 1920 has been for members to emphasize the fact that whether a nation is under a moral obligation or not to take part in military sanctions is a question which it must be free to decide for itself. France and the beneficiaries of the 1919 treaties have tried to make sanctions compulsory, because such sanctions would guarantee their own security and position. But all other nations, including Great Britain and the Dominions, have consistently rejected this obligation, except to the extent that Great Britain assumed it when she signed the Locarno treaty. The sanctions problem will only be solved by experience. No nation will now bind itself in advance to go to war.

The real reason for this hesitation about sanctions is that we have still to find a "pacific" mode of coercion corresponding to the use of the police within the state. Hitherto, the coercion of one state by another has spelt war. But how are we going to preserve the peace of the world by undertaking the obligation to go to war, even as a police measure? That has been the doubt which has caused so many misgivings about Article 10 of the Covenant, which prompted the opposition to the Protocol and even to the Locarno guaranty, which has done so much to keep the United States out of the League and which will certainly prevent her from undertaking any formal or legal obligation to use military or naval sanctions to make the Peace pact effective. Yet the problem is not solved by ignoring it.

Here are two possible ways put forward. The first is to explore all the methods of putting pressure on an outlaw state which can be made effective without recourse to military violence. The second is that the great nations should make it clear that they will never ratify any decision which has been reached by violence, but only decisions which have been reached by pacific and constitutional means. This is, however, an immense sub-

ject which cannot be further discussed here. But the basis of peace within the state is not that violence is never used, but that it is never successful, because in the last resort it is the law courts and the legislatures, and not the parties themselves, which decide.

Not the least important aspect of the peace pact is the effect which it will have on the naval problem. Indeed, it provides the only basis upon which the difficult naval issue between the United States and Great Britain can be solved. Reduced to its basic elements that issue does not relate to prestige or parity, but to security and prosperity. For two centuries the security and prosperity of Great Britain have depended upon her being able to assure the freedom of her own trade in peace and war. Because she has been an island while all her neighbors have been continental powers with land frontiers to guard, she has been able to maintain a paramount navy. Today, however, the United States has reached a point in her own economic development in which her prosperity, though not her security, is becoming dependent upon her being able to ensure the freedom of her own trade in peace and war. She too has no land frontiers to consider, and so can concentrate on sea power. The two states have now agreed in principle upon parity in naval strength. But so long as each has the right under international law to use its navy as an instrument of its national policy it has the right to interfere with neutral trade and therefore to endanger the prosperity or the security of the other, whenever it chooses to go to war.

So long as that exists it is difficult to see how any stable basis of naval agreement between the United States and Great Britain can be found. But the ratification of the peace pact will alter the whole situation. In the first place, each will renounce the right to use its navy as an instrument of its own national policy. In the second place, in so far as it uses it for other purposes than to repel aggression, it will lawfully only be

able to employ it to prevent an outlaw state from using war successfully as an instrument of its own policy, and so compel it to resort to pacific methods of settlement. If both nations live up to the pact, it must mean not only that they will settle all their disputes by pacific means, but the main purpose of their naval armaments will be to serve as an ultimate police guaranty that war shall cease to be the arbiter of international disputes and that pacific means shall be invoked instead. On that basis agreement as to the number and tonnage and gunnage of a reduced naval armament should not be difficult to reach.

How then is a distinction to be drawn between war and the legitimate use of force? The use of police force may be necessary, as it was certainly necessary at Shanghai a year ago, when the dispatch of troops and warships was the only guaranty against the looting of a great international city by an excited and undisciplined army. The use of force has been necessary in the past to deal with chaos, anarchy and violence in Asia, Africa or Central America. The threat of force has often in the past been the only way of making semi-civilized or even civilized nations behave in a civilized way in dealing with their neighbors, or fulfil their obligations under some international treaty or law. Though the necessity for the use of force on such occasions ought to become increasingly rare, as the standards of international dealing improve, it is futile to pretend that they are not likely to arise from time to time. When is the use or the threat of force justified?

The distinction between war and the use of force for genuine police purposes is surely plain. War is the use of force as an instrument of national policy. Police work is the use of force to exact respect for international law, or to compel an outlaw to desist from violence and to have recourse to pacific means of settlement, or to maintain the elementary conditions of law

and order. It will not always be easy to decide where the exact line should be drawn in practice. But in principle the line is clear and, if the Peace pact is really implemented, the question of where that line should be drawn will be gradually settled by world opinion in the light of experience. In actual practice, the best kind of security will probably prove to be the development of the mandatory idea, that is to say, that any nation which sets out to use force for police purposes should have to account for its action to its fellow nations.

It is the same with the problem of large and small states. There has been a good deal of cynical comment in the press of the smaller nations and of Asia to the effect that the Peace pact is a conspiracy by which the great powers are taking the right to share the control of the world between themselves. There is a sense, of course, in which this is true. One of the main reasons of the good behavior of the nations in the past has been the fear of war. If that fear is removed their behavior may undergo a change for the worse. The best protection against such abuse of power by the great powers would seem to be what has been called "international accountability." There is, indeed, much to be said for adding another clause to the Peace pact to the effect that every nation "renounces the right to interfere in the internal affairs of any other state in the interest of its own national policy." That is the principle of trusteeship which, after long struggles, has now been adopted as the basis of British policy in dealing with backward peoples. It is the principle incarnate in Article 22—the Mandates clause—of the Covenant. As a statement of the general principle to which the powers should conform it seems as unexceptionable as the two existing articles of the pact.

Where the Peace pact will eventually lead us no one is likely to venture to predict. It is today but a form into which life has still to be breathed. But, if it is

to fulfil the expectations which have been aroused, it will be because the nations more and more come to see that it is not a mere gesture of good will and good intentions but a fresh start on the principle that the only road to lasting international peace consists in finding the means of applying in the international sphere the same principle as underlies the maintenance of peace in every civilized state, though the methods of applying that principle have still to be found.

The immediate problem, however, is to secure the ratification of the pact in its present form. Before that can be done it will have to pass the scrutiny of the member states of the League of Nations in their Assembly at Geneva and of the Senate of the United States. In both some opposition is likely to manifest itself; in Europe because the general renunciation of war may seem to endanger existing methods of achieving security or even of accomplishing national ends; in the United States because Article 2 may open the way to a renewed entanglement in European affairs. It does not, however, seem likely that the opposition will in either case succeed. To reject the pact would be to plunge the nations back into a new competition of armaments and a certain step towards another world war. To accept it may mean new responsibilities and risks, but it may also mean a long step towards the permanent abolition of the most terrible scourge of man.

THE AMERICAN PEACE TREATY¹⁰

The American proposal for a multilateral treaty for the outlawry of war is the most important step in the direction of the pacific organization of the world which has been taken since the conclusion of the treaties of Locarno. Indeed, seeing that the treaties of Locarno are limited to the safeguarding of the peace in central Europe

¹⁰ By the Right Honorable H. A. L. Fisher. *Contemporary Review*. June, 1928.

while Mr. Kellogg's proposal is universal in its scope, the American project may prove to be in its ultimate operation that indispensable measure of supplementary insurance against war which is required to make the influence of the League of Nations fully effective.

In some quarters there is a temptation to disparage the significance of the American offer by reference to circumstances in the actual political life of the United States which appear to be out of harmony with its claim to lead a great missionary enterprise on behalf of world peace. We are reminded of the naval program before Congress, of the yellow press, of the marines in Nicaragua. The critic asks whether Mr. Kellogg's move represents a settled purpose or only a genial flourish in view of the approaching presidential election. Fortunately, the British Government is not affected by these trivialities. It is prepared to take Mr. Kellogg's proposals as seriously drafted and seriously meant. It realizes that a draft of this kind, coming from the most powerful and wealthy government in the world, must be thoroughly and patiently explored; and if it be true that the occasion of its issue be, as some allege, guided by electoral considerations, what does this prove but that in the opinion of expert electioneers the mind of the American people is so thoroughly pacific that no party is likely to stand well with it at the polls which is not prepared to strike a blow for peace?

Sir Austen Chamberlain says:

His Majesty's Government warmly welcome the proposal of the United States Government that a further joint effort should be made to safeguard the peace of the world. They have been giving close and sympathetic attention to the text of the treaty proposed by Mr. Kellogg with this object and to the observations and suggestions with regard to it, offered by the French Government. His Majesty's Government do not doubt that this Franco-American initiative can be brought to a successful issue, but time is obviously needed for examination of the various issues raised and of the important declarations and explanations offered by the United States Secretary of State as well as for consultation with the Dominions and with the United States and other governments concerned.

So far the British Foreign Secretary, in answer to a question in the House of Commons. Later, in the course of a Foreign Office discussion, he dealt more fully with the Washington proposal in the same sense, assuring the House of his warm sympathy and of his determination, as soon as the concurrence of the Dominions had been obtained, to go forward with the negotiation without regard to the attitude of other powers. These assurances were heartily welcomed on the Opposition benches. The Germans even more effusively welcome the Kellogg proposals. They see no contrariety between the proposed treaty and the obligations which Germany has undertaken at Locarno and Geneva. They note Mr. Kellogg's declaration that the right of any country to defend itself against attack is not affected by anything in the proposed instrument, and announce their readiness to conclude such a pact as that proposed by the United States.

The eagerness of Germany to welcome Mr. Kellogg's treaty on its reception, and without preliminary conference with the other Locarno powers, has aroused adverse comments in some organs of the French press, for in France the general attitude towards the American draft is inspired by a good many questionings and misgivings which are not shared in Berlin. France is a provident country. Learning from her misfortunes, she looks ahead and asks awkward hypothetical questions. In particular, she is anxious to know whether the Kellogg treaty will or will not make her safer in Europe. To the American Secretary of State, who avers that his treaty will not interfere with legitimate self defense, writers in the French press respond by asking what is meant by legitimate self defense. These French gentlemen know what they mean by these terms, but they are not certain that Mr. Kellogg means the same thing. To the Frenchman the peace of Europe is the peace of the treaties, nothing more, nothing less. Any measures of restraint which France may think herself en-

titled to take for the enforcement of the Treaty of Versailles are, in the French view, measures of self defense. Will France, should she sign this treaty, be entitled to take such measures? If, for instance, Hungary were to attack Pressburg, or if the Germans were to invade the Corridor, or to arm themselves in defiance of the treaty, or to make an *Anschluss* with Austria, or to intermit without cause their reparation payments, has France no armed redress under Mr. Kellogg's treaty? Again, how will France stand towards her allies, the members of the *Petite Entente*, if she signs this treaty? Many Frenchmen are inclined to be dubious, and apprehend that Mr. Kellogg will weaken the diplomatic fabric which they have so carefully erected for their protection since the war. "No wonder," writes M. Jacques Bainville, "that the Germans applaud the American proposal which condemns and seeks to dissolve all our particular and private alliances." "No wonder," writes Pertinax in the *Echo de Paris*, "that Stresemann approves Washington. For long months at a time at Geneva Germany's whole energy has been directed against these private *ententes*, these understandings for the protection of the peace treaty *status quo* that bind France with Poland, Czechoslovakia and Jugoslavia."

It is intelligible that misgivings of this kind should be felt in a country so sorely and recently tried. We cannot condemn French publicists for giving expression to thoughts which are undoubtedly in the public mind, or the French Government for the cautious spirit in which it approaches a far-reaching proposal which may be found to be incompatible with engagements already concluded. The truth is that the Kellogg proposal does not at first sight accord with the general French outlook on affairs. The French view of what constitutes peace is the Europe of the treaties expressly guaranteed by the combined force of the nations of the League. It is a peace founded on and protected by military sanc-

tions, enforced in specific military agreements. A peace, so protected, so insured, may last. Weaken or withdraw the sanctions and peace is jeopardized.

In a speech to the American Society of International Law Mr. Kellogg specially addressed himself to the relief of these apprehensions. He pointed out that his treaty could not invalidate the natural rights of self defense, that there was no necessary inconsistency between the Covenant of the League of Nations and an unqualified renunciation of war, that if all parties to the Locarno treaties were to become parties to the multilateral anti-war treaty, there would be a double assurance that the Locarno treaties would not be violated by a recourse to war, and that a violation of the multilateral pact by one party would naturally relieve the others of their obligations to the treaty-breaking state.

How far does this carry us? The American draft treaty is simple and short. It pledges the signatories to renounce war as an instrument of national policy and to settle all their differences by peaceful means. It proposes no sanctions. It provides no armed police. The signatory power which goes back upon its signature and does go to war in pursuance of its national policy is an outlaw. The other signatory powers are released from their engagement not to use force so far as the transgressor is concerned. They are not, however, compelled under the treaty to use force against the transgressor. There is no compulsory application of force of any kind military, naval or economic under the American draft.

There is another lacuna to the French thinking in this brief document. The phrase "renunciation of war" is interpreted in the American press to be equivalent to the phrase "outlawry of war," but outlawry seems to imply the existence of some acknowledged sovereign, by whose judgment it shall be determined whether or no an act of outlawry has been committed. The American

proposal provides for no such sovereign, no such arbiter. But can there be real "outlawry" in a masterless world?

A principle is none the less good in politics by reason of the fact that it is never pushed to its logical consequences. If the leading nations of the world were to sign a solemn instrument (as they are now invited to do by the Government of Washington) renouncing war as an instrument of national policy and binding themselves to refer every dispute whatever and without reserve to arbitration, such declarations would undoubtedly have a high moral value, even if there were no agreement as to the tribunal to which disputes were to be brought or as to the general principles which should govern the determination of disputes or as to the sanctions which should be applied in the event of transgressors against the letter and spirit of the treaty. But it is none the less useful to consider whither the principle in strict logic will lead us. It will lead us very far.

The acceptance of a treaty renouncing war as an instrument of national policy would be the most revolutionary act in human history. No power has ever yet consented to found all its public action on such a principle. Arbitration treaties are numerous, but almost invariably accompanied by reserves. Moreover, in the Covenant of the League of Nations there is no such absolute renunciation of war as is implied in the Kellogg treaty. When all means of conciliation and arbitration prescribed by the governing instrument of the League have been exhausted the contending parties may still draw the sword. The Protocol, indeed, closed up the gap and made peaceful methods compulsory; but in the British Empire the Protocol was widely read as an instrument for securing the territorial *status quo* in Europe by the joint forces of the British Empire and the armed powers of the continent. Only on the assumption that the national interests of France and the *Petite Entente* were coincident with wider international

interests could it be said that war was renounced as an instrument of national policy under the Protocol.

The Briand-Kellogg treaty, consented to by the United States Senate on March 6th, 1928, was generally regarded as a notable advance upon the Root treaty which it supplanted. The reservations of "national power, vital interests and independence" contained in the Root, as in other arbitration, treaties concluded by the United States Government were dropped, an omission which was interpreted to imply that matters of vital importance could henceforth in the judgment of the contracting parties be submitted to arbitration. Nevertheless, the reservations set out in the third article of the treaty were extensive. "All matters within the domestic jurisdiction of either of the high contracting parties, all matters involving the interests of third parties, all matters depending upon or involving the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine, or depending upon or involving the obligations of France in accordance with the Covenant of the League of Nations" were excluded from the scope of the treaty. These qualifications are not only wide in themselves, but they are capable of being stretched, seeing that it is difficult to imagine any important issue between two modern nations which may not colourably be held to affect the interests of third persons. Yet this instrument marks the furthest point to which the principle of arbitration had so far been carried in the dealings between the United States and foreign countries. It is true that an "all-in" treaty of arbitration was signed by Mr. Bryce and Mr. Knox in 1910. In that draft treaty there were no reservations of any kind, no exceptions on the familiar score of "national power, vital interests and independence," no exceptions on the score of the Monroe Doctrine or the interests of third parties. But the treaty was thrown out by the Senate of the

United States. Even Roosevelt, strong friend of England as he was, felt that "all in" arbitration went too far.

Mr. Kellogg's proposal, then, marks an epoch. It is a great thing in itself that such proposals should be advanced by one of the leading powers of the world. It will be a still greater thing if they are accepted as the basis of policy by the principal states of Europe. It is doubtful, however, whether opinion in Washington yet realizes how far these proposals go. The idea of an international court, of arbitration, of outlawry, has long possessed an attraction for the American mind, always accessible to conceptions derived from the sphere of jurisprudence and apt to take direction from the lawyers. A large number of people who looked upon the League at Geneva with dread as likely to entangle the United States in the coils of European negotiations were anxious that their country should be represented on the Supreme International Court. The outlawry of war became a popular idea while the reference of disputes to the conciliatory procedure of the Council of the League was anathema. In reality the acceptance of the idea of outlawry involves a far more complete surrender to the international idea than the acceptance of the Covenant. If the idea is to be carried out in practice, and is to be more than a vague analogy, it implies sanctions at once comprehensive and precise. Finally, it implies the idea of an organized society, from which the offender can be outlawed for a cognizable offence recognized and duly punished by his fellows.

To work out so large and fruitful an idea into its manifold consequences is clearly a matter which cannot be hurried. It is a comparatively simple affair for the great powers who have already submitted to the Covenant of the League of Nations to sign the short and simple treaty which Mr. Kellogg has submitted for

consideration. We trust that they will do this. But the signatures of half a dozen leading statesmen to an important (and revolutionary) document do not of themselves imply a general change of outlook. A vast deal of propaganda both in the United States and in Europe is necessary in support of the principle of the treaty, before it will sink into the minds of those who write and those who read the public press. Some change of attitude will be required both in the United States and in Europe. In the western hemisphere it must be recognized that, seeing that no human society has yet been able to dispense with force, it follows that force, being renounced as an instrument of national policy, must be reserved for the use of an international authority. So far the United States declines to face the problem of an international authority. It is a question to which sooner or later the American mind will be directed.

In Europe too we must readjust our views. The continental idea of peace as a passive acquiescence in existing political conditions must give way to a conception of peace as an equilibrium of counterposing interests, constantly altering in their relations of weight and power, but sustained by a circumambient spirit of confidence and only in the last resort, and, if challenged by force, to be supported by the armed will of all.

Sir Austen Chamberlain, who rendered such signal service to the cause of peace at Locarno, has now presented to him, through the initiative of Mr. Kellogg, a second opportunity of mediating between France and Germany and of bringing the contrasted views of these two countries into line with the thought of American statesmen. In this matter Britain is well suited to play the part of mediator with success. The idea of renouncing war is not unfamiliar to us. War is renounced between England and Scotland, between Britain and the Dominions, between Madras and Bombay, between

Bengal and Behar. The idea of war within the Empire is remote from our thoughts. The apprehension of the thing does not add a sixpence to the Estimates. And we say the same of the relations between Canada and the United States. It is true that war has never been formally renounced by these two neighboring powers; but in practice it is renounced, and neither country arms against the other. To these conceptions, familiar within the British Empire and characterizing for more than a hundred years the relation of Canada to her southern neighbor, it is now proposed to give a wider existence. Alike as a member of the League of Nations, as a Locarno power, and as the principal member of a confederacy of new nations living in peace with one another, Britain has it in her power to render a great service to the world by interpreting France to America and America to France. We have little doubt that Sir Austen Chamberlain will see to it that Mr. Kellogg's initiative does not run to waste, like an African river, in the sands. In his efforts to strike a new blow for the cause of peace he will have all the best elements of the British nation behind him.

At what point and in what way the blow can most effectively be struck are matters which admit of discussion. While it is clear from the debate in the House of Commons that Parliament favors a prompt acceptance of Mr. Kellogg's proposals, the form which that acceptance should take may be plausibly disputed. Should the treaty be signed as it stands, without reserves or explanatory comments, or should there be an exchange of notes between the British Empire and the American Government accepting the principle of the treaty in some formula hereafter to be agreed, but explaining the sense which they attach to their acceptance? We are inclined to think that the first of these courses would be preferable to the second. It is true that the mere signature of

the treaty will not of itself adjust the differing points of view of Europe and the United States on some grave issues of policy; but it will create an atmosphere in which these difficulties are likely to yield to treatment. The procedure by an exchange of notes, unless, indeed, all the notes should be couched in identical terms, would not be so efficacious to this end. It would be far better to obtain from all six powers a frank unqualified acceptance of the treaty and then to set about an examination of the best way in which the agreed end could be secured. If Sir Austen Chamberlain is justified, as we hold that he is, in maintaining that Britain does not, and has not, for a long time, regarded war as an instrument of national policy, there should be no difficulty on our side in sending in an unreserved adhesion to the American proposal.

After the acceptance of the treaty it would be far easier to open out, with a genuine prospect of success, the whole question of the relations between the United States and the League. The League of Nations is founded on the conception of the equality of independent states. Under the Covenant small states stand on an equality with large states, Belgium and Luxembourg with France and Germany. But how far does the Monroe Doctrine, as recently interpreted, recognize such an equality? Does it, or does it not, countenance the armed single-handed intervention of the United States in Mexico, Panama or Chile? If it does, then it is clear that the theory of Geneva is one thing and the theory of Washington another, and that the time has come when we should all endeavor to arrive at a common doctrine as to the equality of independent states and as to the conditions under which a large state may be regarded as the mandatory of international authority when it forcibly interferes with the affairs of smaller neighbors enjoying political independence. In a word, the Monroe

Doctrine requires reexamination in the light of the Kellogg principle, as also does the doctrine of the armed peace of continental Europe. The acceptance of the treaty without reserves would appear to make such a revision easier and not more difficult of accomplishment.

THE OUTLAWRY OF WAR ¹¹

The Kellogg pact has been solemnly signed and delivered, but what does its signature portend? In the course of his mellowed reminiscences which have been partly presented to the world the late Lord Oxford and Asquith repeated the story of a young American girl who spoke scoffingly of the "Ten Commandments." "They don't tell you what you ought to do," she said, "and only put ideas into your head." The same enigmatic comment may very well be made, *mutatis mutandis*, on this momentous suggestion for the outlawing of war which, first suggested as a bilateral pact by M. Briand to the United States in June, 1927, was eventually transformed by Mr. Kellogg into a multilateral war-denying ordinance, and made applicable to all the signatories of the treaties of Locarno. Before the reception of the proposal by our own Foreign Office quite an animated correspondence had passed between the French Foreign Minister and the United States Secretary of State; and each successive dispatch, like the Ten Commandments of the American girl, had appeared to convey no clamorous call to an immediate duty, but simply to bring fresh ideas for discussion into the official mind. If Mr. Lloyd George had been a party to the affair he would no doubt have staged a great European conference of the big six with—who knows?—a game of golf to diversify the intervals snatched from business. Neither M. Briand, however, nor Mr. Kellogg claimed to be a wonder-work-

¹¹ By J. H. Harley. *Fortnightly Review*. September, 1928.

ing magician, and they were content to see their negotiations meander along in the form of successive epistolary communications. In this they were undoubtedly right, because the proposals they had before them were certainly not to be rushed, and it was well to examine them with the closest scrutiny and care.

It is absolutely necessary to press this point, because as soon as Mr. Kellogg's original proposal reached this country a loud cry was raised by certain sections of public opinion for its immediate, unreserved and absolutely uncritical acceptance. "Why tarry to examine or discuss?" they insistently asked. Better seize the opportunity at once when it is offered to you, and settle the future of war by a single stroke of the pen. Delay could only mean that the proposals might lose their virtue, and, at any rate, that the United States might be hardened in their previous determination to renounce any responsibility for the politics of Europe. So far at least as our own country was concerned it was a question whether our previous engagements to Europe and the League of Nations permitted us to make such a truly light-hearted choice; but, at any rate, some of the people who mused in this fashion had a short and easy way of getting rid of any such harassing objection. "If your commitments are so and so," they coolly remarked, "so much the worse for your commitments."

To renounce or outlaw war by making light of your solemn commitments seemed, in fact, to the people in this unenviable frame of mind a perfectly permissible operation. But is it really possible to act in international affairs as if your own country held all the trumps and there was no attention needed for the hands of your partners?

Is there not a great deal of confused thought and questionable international morality involved in so utterly perverse a pretension? It is to be noted, too, that when

Poland last year at Geneva proposed that all the nations represented at the League of Nations Assembly should make an equally strong renunciation of war there was not the same active enthusiasm among many of this same order of enthusiasts for an immediate and unqualified acceptance. Why should there be an almost cold aloofness in the one case and an eager-hearted readiness in the other? The United States is a great nation, and it will count for much and more than most in the historical evolution of the future. But it is a poor compliment to such a nation to require that its epoch-making proposal should be thoughtlessly accepted without enquiring whether it affects any of our own binding engagements, or how far it can be fitted into the framework of the efforts already made in the direction of security, arbitration and disarmament under the auspices of an existing League of Nations.

Indeed, it is not too much to say that a certain suspicion among other nations that we in this country are rather lax in our interpretation of our responsibilities for the peace of Europe has been responsible for a good many of the hesitations and reservations which have been hitherto manifest in conferences on such vital questions as security and disarmament. Foreign observers have read statements from the speeches of politicians, or from the pens of publicists, which practically conveyed the impression that to keep the peace in the east of Europe is not worth the bones of a single British grenadier. At the same time those who were strongest in their expression of such an opinion were also most insistent in proclaiming that the Treaty of Versailles, so far as the east of Europe is concerned, must certainly and speedily be revised. The advocates of peace were in this way transformed into inveterate gamblers in the possibilities of war. In the unsettled atmosphere which has been thereby generated can we really make up our minds, without the most careful examination, that it is

practicable to make progress by a simple moral gesture confined to the big six, which was all that was involved in Mr. Kellogg's original plan? At any rate, it obliges us to ask ourselves what were the immediate antecedents of Mr. Kellogg's proposals. Had they any connections with contemporary American thought and debate? If we make ourselves clear about the past we may gain more reliable insight into the future.

The moment, however, we put such pertinent questions we speedily discover that Mr. Kellogg's offer arises from no inspirations of high policy which suddenly possessed him in a generous mood of mind, and which marked something absolutely new in the public attitude and opinion of the United States of America. For a long time there have been large bodies of people in that country who have advocated what they termed the "outlawry of war." Their views may be studied in a most suggestive form in a recent book by Dr. C. C. Morrison, editor of *The Christian Century*, which is graced by a foreword from the pen of Professor Dewey of Columbia University. This volume, as may be expected from such an author, shows all the compelling and, at times, somewhat unpractical influence of a great religious ideal. Dr. Morrison will have none of the worldly schemes of politicians and diplomatists. Their step-by-step ideas of arbitration and disarmament have no attraction for him. Sometimes, though he formally disowns it, he comes very near counselling an idea of absolute national non-resistance. The nations of the world are to get together in a great conference which is to dwarf into insignificance even the mightiest of the Lloyd George assemblies. There is to be no skilful manoeuvring. There is to be no need of secret trysts in remote wayside inns. Under the influence of overmastering religious or moral idealism the nations are once for all to repudiate and forswear the very suggestion of war. War itself becomes the accursed thing.

International law is relieved of a heavy incubus by getting rid of such sections as deal with the laws of neutrality and contraband.

But it would be unjust to this American school, which advocates the "outlawry of war," to suggest that they expect to exorcise war simply by shouting against it long enough and earnestly enough in a big international conference. There is a practical element in the typical mind of the United States which forbids any such desperate conclusion. It was said of a certain rich widow that, before accepting an impecunious suitor of good family, she stipulated that there should be "powdered footmen and family prayers." There is something to be found of this same keen regard for the main chance in this American scheme for the "outlawry of war." The enthusiastic delegates at the great world conference are not to be left without any up-to-date machinery to help them to realize their splendid and overmastering designs. Besides the world conference there is to be a conference of jurists. These have no Coué conception of revolutionizing public policy by the high-minded reiteration of absolute unanimity. They will lay down in dry and comprehensive outlines the code of a new international law. This, in its turn, will be the primary authority for the decisions of a new Supreme Court of the United States of the World. This world court of law is no shadowy or impotent affair. Dr. Morrison compares it unhesitatingly to the Supreme Federal Court of the United States. Just as the different American states came into the union and submitted their inter-state disputes to the jurisdiction of their Federal Supreme Court, so the different states of the world are to make their banishment of war effective by submitting their international disputes to the jurisdiction of the supreme court of a world-wide and all-inclusive federation.

There is so much enthusiastic moral idealism in this scheme for the outlawry of war that it is difficult to deal with it by the ordinary processes of cold and critical argumentation. One gets an uncomfortable opinion that he will be henceforth denominated a hopeless soul who is insensible to the grandeur of uplifted idealistic appeal if he ventures on any objections to these cloud-compelling ideas. But the more lawyer-like proposal of a supreme international court emboldens one to say that, though the Supreme court as the ultimate authority under the American Constitution has always been a favorite in American constitutional theory, it has never found favor with any of the new European nations who had to determine the outlines of their brand new constitutions after the war. Germany, Austria, Czechoslovakia and Poland had all the most approved models before them, including the Constitution of the United States, and none of them followed the American practice in the powers which it gives to a Supreme Federal Court. Is it likely, therefore, that, through some miraculous change of opinion, these American constitutional theories will at once commend themselves to a great international conference which, in a fit of the most impassioned unanimity and enthusiasm, is going to banish war forever from the legal code of the world?

The fact is that, though the American idealists make a desperate effort to be practical in their proposal of a new international court, they are hardly practical enough. It is the custom of those who are keen in their advocacy of this particular scheme of thought to decry any reference to the policeman. They profess to be tired of even hearing his objectionable name. Nevertheless the name must still be repeated to them. Have they really shown that they could do without the convenient help of the policeman? Suppose the fit of high enthusiasm wears off. Suppose—to take a hypothetical case—that

Italy attacks Jugoslavia. What is to be done? Dr. Morrison and his friends fall back again on the overmastering strength of their new-born international opinion, which has determined to ban war and all its nefarious works. But supposing a worse comes to the worst. Apparently the friends of the "outlawry of war" have a very casual idea of what is then to be attempted. "All disputes," says Dr. Morrison, "lying outside the jurisdiction of the world court would be settled as in civil life—out of court. Here would be available the good offices of other nations or any other conciliatory process. Or the dispute would be left to time to settle or not settled at all." Surely this is only trifling with a series of grave eventualities. When the southern and the northern states of the American union disputed, the dispute was not left to time to settle, or not settled at all. If the desire for resistance is about it will certainly out. Fine words cannot coerce armies. Dr. Morrison does not make the American Civil war less by insisting that it may more properly be termed a rebellion.

These were the problems—the most grave and insistent which can face the future of civilization—which were being discussed in the United States during the June of last year when M. Briand submitted to Mr. Kellogg his proposal of a bilateral pact of perpetual friendship. This pact, though emanating from France, shows the influence of the advocates of war outlawry in its first article, which solemnly declares that the high contracting parties "condemn the recourse to war and renounce it respectively as an instrument of their national policy towards each other." There was, of course, no mention in this proposed pact of the complementary American proposal of the supreme international court. France has not followed American precedent in the drafting of her own constitution; so there was no reason why she should apply another measure in the realm of international affairs. There was, however, another very

much more practical reason why she should not have supposed that the United States were ready to support an international court with extended and adequate jurisdiction. France and the United States were, probably, just at that very time beginning to negotiate for a Franco-American arbitration treaty. This treaty, in the draft made public by Senator Borah, and signed in Washington on February 5th of the present year, was conceived in no heroic mould. It was an arbitration treaty, but by no means what is termed an "all-in" arbitration treaty. It did not, indeed, except the questions of honor, independence and vital interests, which were withdrawn from arbitration in the Franco-American treaty which was signed in 1908. But, instead of that, it made four new reservations which, though their full effect has not yet been authoritatively settled, seem on the face of them sufficiently grave and far-reaching. These are: (1) questions of internal sovereignty; (2) questions interesting third powers; (3) questions relating to the Monroe Doctrine; and (4) questions touching the duties of members of the League of Nations.

In the preamble of this treaty, however, it was stated that the two high contracting parties are "eager by their example not only to demonstrate their condemnation of war as an instrument of national policy in their mutual relations, but also to hasten the time when *the perfection of external arrangements for the pacific settlement of external disputes* shall have eliminated forever the possibility of war among any of the powers of the world." Here there are evident, in perfectly peaceful juxtaposition, two lines of advance in the elimination of war. The first, the condemnation of war as an instrument of national policy, might take the form of a grand moral gesture; but the second, the "perfection of external arrangements," is evidently intended as necessarily complementary to the first, and the sole way in which the grand moral gesture could be made operative in history

and in fact. M. Briand, in his proposal of June, 1927, chose to make the first of these objects the subject of a separate pact. Why he did so, it is of course impossible to conjecture. He may have been influenced in this by the fact that the American advocates of the "outlawry of war" generally spoke of France as a military nation, definitely devoted to the doctrine of the supremacy of coercive sanctions, and that he desired to lead such people to a juster and kindlier judgment. But, at any rate, M. Briand can hardly have looked on his bilateral pact as standing by itself; he must have regarded it as complementary, or preparatory, or as generating a more favorable atmosphere, for the strengthening of the external machinery to be used in the subsequent treaty of arbitration.

However that may be, it is certain that the Briand proposal of June, 1927, was a great surprise to the American advocates of the "outlawry of war." It created for them a situation extremely embarrassing. In the first place it considerably weakened the Coué strength of their grand moral gesture. All the nations of the world unitedly and unanimously banning and repudiating war, might create a power which could shake the strongest foundations of the old world order, but it is inconceivable that two nations, however important and powerful, could generate the "moral dynamic" sufficient to carry the world over more than a very limited series of years. And in the second place, M. Briand was preparing as his complementary "external machinery" no project of a permanent international supreme court, but simply a new treaty of arbitration; and arbitration by the out-and-out advocates of the "outlawry of war" is regarded as on a very inferior order of thought from their own magnificent idealism. On the other hand, they could not counsel the rejection of M. Briand's offer. That would be to scorn the first faltering effort of what might prove to be a true repentance.

Consequently they counselled a medium course—to accept M. Briand's offer, but, so to say, without prejudice. Nothing was to be added to it that should commit the United States to any specific form of "external machinery." The "moral gesture" was to evoke a correspondingly moral response—and that was all.

Mr. Kellogg was obviously very much influenced by the comments of the advocates of war outlawry during the six months which he devoted to the consideration of M. Briand's proposal. After all, it is only human nature in a politician to reflect that the end of his administration is approaching. In any event he was anxious to do something which, in his own words, would be at once "arresting" and also "appealing" just because of its purity and simplicity. He could not go the whole length of the outlawry people and add to the proposals a permanent supreme court of international justice because he was only too painfully conscious that his arbitration negotiations with France were being conducted far below the heights attained by this very exalted ideal. But he was much reassured by the fact that, in relation to M. Briand's proposal the war outlawry adherents did not now insist on the full measure of their requirements. Could he not go one better than they did? Could he not intensify the collective effect of the Franco-American renunciation of war by inviting other nations to add their voice to the original two? If two, why not six? If bilateral, why not multilateral? If France and the United States, why not Germany, Italy, Japan and Great Britain? Mr. Kellogg also appeared to think that, having taken the first step it was unreasonable to refuse to take three or four more steps further. "The difference between the bilateral and the multilateral form of treaty," he writes in his dispatch of February 27th, "having for its object the unqualified renunciation of war as an instrument of national policy seems to me to be one of degree and not of substance." In reality by

his extention of this outlawing from two to six adherents, Mr. Kellogg has reached the point where the category of number passes into the category of quality, and where you could not adopt the pact, in its truncated form as a grand moral gesture without considering also "the perfection of the external arrangements" by which it had to be translated into the actual course of events.

The main trouble was that the United States is not a member of the League of Nations, and that consequently its perfection of "external arrangements" has to be reached in quite a different direction. So long as the proposal for the renunciation of war was confined to France and the United States the question of the League of Nations did not arise. France and the United States moved in very separate orbits. The United States were joined at Havana with the powers of the American continent. France was joined at Versailles, Geneva and Locarno with the powers of the continent of Europe. These two zones could hardly intersect. France was warned off the American continent by the operation of the Monroe Doctrine, while the United States, by refusing to join the League of Nations, showed that she did not desire to assume any responsibility for keeping the peace outside the American continent. But the moment you planned to make a pact between the United States and certain selected powers from the League of Nations, that moment you raised a most formidable array of questions which were entirely avoided in the more modest bilateral arrangement.

There can be no manner of doubt that Mr. Kellogg did not intend to raise any troublesome difficulties, any more than the Ten Commandments were designed to put ideas into the head of an American girl. His subsequent treatment of his critics has shown how anxious he is to make the signing of his pact as unqualified as possible, and to provide beforehand in his final draft for just these very contingencies. But this fact only proves

how mistaken were these circles in this country who almost angrily protested against the first French reservations, and who appeared to imagine that you paid the best compliment to Mr. Kellogg and the United States if you swallowed his original bolus entire without manifesting any particular care as to the ingredients of which it was compounded.

One glance, indeed, at the Kellogg pact in its original and limited form was sufficient to show that it was impossible for Great Britain or France to sign it without being unfaithful to their engagements—at least until all the countries concerned in Locarno were added to the original six. Nothing can be gained for the peace of Europe by minimizing the importance of obligations which you have already solemnly assumed. Neither do abstract statements of moral duty avail us much, until we have shown how they can be brought into connection with the concrete fact. The constant recitation of the Categorical Imperative of Kant is not sufficient to make an effective path amid the constant entanglements of our daily round of duties. The *Imitatio Christi* was supplemented within a short span of years by *The Prince* of Machiavelli. Grandiloquent pacts that mean everything in general too often end in nothing particular.

No revolutionary movement can have any hope of success until it comes to terms with the actual situation of affairs. The bewildering array of denationalizing decrees, which mark the earlier years of Soviet Russia, was followed by a new economic policy and by the exile of Trotsky. The great international outlawry of war was to be made effective, as we have already seen, by a supreme international court based strictly on American precedent. When Tolstoy endeavored to persuade us of the feasibility of an abstract doctrine of non-resistance it was speedily pointed out that there were two obvious exceptions to such an unqualified demand—(1) the case of self defense; (2) the case when a

big bully attacks a weaker man or even a woman or child. The same exceptions could be pleaded to any absolutely unqualified international pact for the renunciation of war. As regards the first, Mr. Kellogg at once hastened to explain that his proposal is not meant to take away the "inalienable right of self defense." But what about the second objection? Mr. Kellogg partly met it by conceding that the violation of the pact by a single signatory absolved the others from their obligations to that offending member. But if ever the European peace is broken in defiance of pacts and Covenant it will be by a strong nation which seeks at one great sudden movement to overrun a weaker, and thus confront Europe with the absolute accomplishment of its designs. It was to provide for the speedy action by the League in the case of such a contingency that the security provisions of the Geneva Protocol were elaborated. The first great point, then, that must be kept in mind, in the scrutiny of the American proposal, is that it should be brought into some organic connection with all the efforts in the direction of security, disarmament and arbitration, which are at present being slowly elaborated by the common sense and combined wisdom of Europe. It is obvious from Sir Austen Chamberlain's note of acceptance that he thinks it might still be strengthened in this respect.

Mr. Kellogg's proposal may lead to some great step forward in international relations, but only (1) if it is made consistent with the arrangements already devised to render war difficult or impossible; (2) if it infuses a new and practical spirit into the elaboration of more perfect external arrangements for the future. Subject to these two important qualifications it may, in the first place, serve as a standing rebuke to those many people—in some cases professed pacifists—who are continually shouting for treaty revision, and thus sowing the seeds of unappeasable discords for the future. In the second

place, it may reventilate the question of the relation of the United States to the League of Nations. And, in the third place, it may raise again the reintroduction and revision of some universal scheme of "external arrangements" such as the Geneva Protocol.

Sir Austen Chamberlain, as his reply shows, is not altogether enamored of a universal arrangement, but it is difficult to show how, without it, there can be any real and substantial progress in the allied and inseparable questions of security, disarmament and arbitration. The Geneva Protocol, with all its faults, is the only complete attempt as yet to envisage the whole difficult problem of the external arrangements for the renunciation of war.

Indeed, owing to the marked difference in the American and European outlook as regards a supreme international court, it may be impossible to hammer out an absolutely universal scheme. But some such schemes there must be to complete the Kellogg pact. Is it not right that great ideals should have at their command the most improved international machinery?

THE WAY OF PEACE¹²

The religion of enmity in its unqualified form is as indefensible as the religion of amity in its unqualified form. Each proves itself to be one of those insane extremes out of which there comes a sane mean by union with its opposite.—*Herbert Spencer.*

There is no new thing under the sun. When, in 1815, the Tsar of Russia invited the civilized world to join the Holy Alliance, it was laid down in Article II of the resultant peace pact that "the sole principle of force, whether between the said governments or between their subjects, shall be that of doing each other reciprocal service." Article III announced that "all the

¹² By J. O. P. Bland. *English Review*. November, 1928.

powers who shall choose solemnly to avow the sacred principles which have dictated the present act . . . will be received with equal ardor and affection into their Holy Alliance." Alexander, it is true, on moral grounds, similar to those which prevent Mr. Coolidge from having any dealings with the Soviets, could not bring himself to invite Turkey to join, but for the rest of the world, he assumed, as speculative idealists have done before and since, that the corporate conscience is capable of a development equal and similar to that of the individual. Lord Castlereagh called the Tsar's treaty "sublime mysticism and nonsense," an opinion speedily justified by events. Signor Mussolini calls Mr. Kellogg's pact "reciprocal leg-pulling"; of the two, one prefers the phraseology of 1815. Alexander's idealism was wholeheartedly sincere, and even less sophisticated than that of President Wilson, but both were closet philosophers who persuaded themselves that, by the recording of "noble sentiments in a solemn treaty," they could bring about the millennium of universal and permanent peace.

The League of Nations, like the Holy Alliance, arose out of the natural revulsion of the civilized world from the horrors of war, and the desire to prevent its recurrence. Lord Robert Cecil, one of its most earnest godfathers, comparing it with the Holy Alliance, attributed the failure of the latter to the fact that it became restricted to a certain group of nations. "The League was to be something very different, because it was 'to be open to every nation which can be trusted by its fellows to accept *ex animo* its principles and basis.'" He tactfully overlooked President Wilson's declaration that the League must be limited to a partnership of "democratic nations, and that no autocratic government could be trusted to observe its covenants." Mr. Asquith was convinced, "as a matter of common sense, that the League stood on a more solid foundation than any of the transient combinations between all the great powers

of history." General Smuts, whose scheme for the organization and regulations of the League's activities first gave coherence to President Wilson's vague ideas, declared that "the new institution of peace must be something additional, superimposed on the existing structure; it must be an organic change, woven into the very texture of our political system. The new motif of peace must in future, so to speak, flow from the nature of things political." At the same time, he realized that "war is a symptom of deep-seated evils, a disease or growth out of our social and political conditions." Viscount Grey, under no delusion as to the immediate probability of the requisite organic change, proposed that the League should have at its disposal "an authoritative international force, which should act as police in individual countries." The League of Nations Union, associated with the American League to Enforce Peace, went further and proposed "to create a supreme international court and to *enforce* its decisions; to act as trustee and guardian of uncivilized races and undeveloped territories, to maintain international order, and thus finally liberate mankind from the curse of war." There has never been anything unduly modest about the League of Nations Union; but President Wilson put the finishing touch to these imposing designs for the edifice of peace, by declaring that its establishment, to be secure, must "definitely exclude those economic rivalries which have been the prolific source in the modern world of the plans and passions that produce war."

The roseate mists of this pacific idealism were rudely scattered by the cold blast of the American Senate's purely domestic politics, which disavowed the President and consigned his League Covenant to the waste-paper basket. Thenceforth, as an effective authority to prevent the causes and limit the consequences of world conflicts, the League was doomed, like the Hague before it, to futility. It became a thing of words remote

from works, of pious opinions that could never be binding decisions. General Smuts, more in sorrow than in anger, has lately summed up its situation. "The League," he says, "has not responded to the highest hopes of those who founded it. It has become untenable in the politics of Europe, in that mesh of rationalism which is dividing the world today and tearing humanity to pieces." He attributes its failure to the fact that it was "weakened and left lop-sided through the abstention of the United States." But Mr. Kellogg's peace pact now inspires him with fresh hope, for in it he discerns the influence "of millions in America today who realize profoundly their co-responsibility for the affairs of the world." The passing years have evidently not diminished the gallant general's zeal for the welfare of humanity, nor added anything to his understanding of American politicians.

I have dwelt at some length on the history of the League because a comparison between its genesis and that of Mr. Kellogg's pact is instructive. The foremost advocates and exponents of America's latest initiative in international pacifism find in it new and vital elements of a kind to justify optimism, just as those of the League did ten years ago. Mr. Denis P. Myers of the American World Peace Foundation, writing to the *Times*, declares that "the extremely serious attitude of the American Government is the most salient new feature of the peace movement. . . . The United States Government," he says, "is making up for lost time in about the same spirit of devotion that it showed when it entered the world war." Curiously enough, he also observes that Mr. Kellogg's "naked formula" is good American politics, inasmuch as it supplies something tangible and intelligible to satisfy a popular demand, "which seethes and burgeons with peace sentiments." This popular demand for a lead in international pacifism had brought considerable pressure to bear upon the State Department

long before "the grand conception of the French Foreign Secretary" had provided a heaven-sent opportunity for satisfying it, and thus refuting the Democrats' criticism that "the Republican party had done nothing to promote international peace."

President Wilson had also a seething mass of sentiment behind him, but it did not suffice to make the Senate accept the principle of co-responsibility in world affairs, upon which General Smuts now relies and upon which depends, in truth, even the moral effect of the Kellogg pact. Mr. Philip Kerr of the "Round Table," a leading light of the National Council for the Prevention of War, writing in the *Spectator* before the signature of the pact, held that it "introduced a new and vital element into the problem," inasmuch as the nations pledge themselves to maintain the peace of the world by the "legitimate use of force for police purposes," and to *compel* resort to pacific modes of settlement in international disputes. He regards the new pact as superior to the Covenant of the League, or the Monroe Doctrine, in that it creates the mechanism which will "compel the nations to submit their disputes to the test of reason and justice impartially applied." Like General Smuts, he assumed, in fact, that the United States would henceforth bear its share of the world's burdens, and, accepting the principle of co-responsibility, cooperate in the legitimate use of force for police purposes. Without such cooperation the pact for the outlawry of war obviously becomes as lopsided as the League of Nations, a *beau geste* and nothing more. Hence the painful silence in the high places of pacifism since Mr. Kellogg has been at pains to make it clear, before signing the pact, that it has no bearing on his Government's naval policy, as stated at Geneva; and, furthermore, that, in the event of the European powers deciding to impose sanctions against any nation for violation of the pact, the United States does not, and would not, recognize any positive military or economic

obligation. Such being the case, it matters not whether the Senate ratifies the pact or not.

Speaking on June 11, Mr. Kellogg commended his proposed outlawry of war to the support of the churches as "a most impressive manifestation of the spiritual nature of man." He believed that the time had come for a "frank renunciation of war as an instrument of national policy, to the end that the peaceful and friendly relations now existing between the peoples of the world may be perpetuated." Only the limited vision of a mind wholly obsessed by domestic and electioneering politics could thus describe the present condition of existing international relations, or ignore the significant failure of the powers to agree in the matter of naval armaments which, as Mr. Philip Kerr observes are "the barometer of the mutual confidence of nations." In proclaiming his simple faith in the comity of nations and his readiness "without qualification or reservation" to renounce war, the Secretary of State, with a shrewd sense of the probable attitude of the Senate and appreciation of the effect of a splendid gesture on the electorate, prudently declined even to consider any technical details or conditions which might impair that splendor. In the sight of all men he hitched his wagon to a star (having carefully insured the contents) and left the rest to providence and the Republican party. Accordingly, he brushed aside as irrelevant Great Britain's tactfully indirect reference to the Monroe Doctrine and her expressed intention to invoke something like this doctrine for the security of the Empire, in certain regions which have a special and vital interest for His Majesty's Government, and where the Kellogg formula, being unintelligible, must be of no effect. He declined to discuss the French Government's exclusion from the scope of the pact of all "wars of self defense," probably because he knows that history can show no case in which a belligerent has ever admitted to being the aggressor. His "naked formula" cares for none of these things, least of all to be saddled with the duty of

defining as a matter of practical politics what shall in future constitute justifiable "police measures" within the meaning of the pact. Yet without a definite agreement in this vital matter, the pact becomes, in the words of Signor Signoretti, a "colossal windbag." Consider, for example, the thorny dilemma of the European powers if called upon to determine whether active defense by Japan of her special position in Manchuria comes under the heading of war or that of police measures. Or if Great Britain were compelled to take forcible measures to prevent the establishment of an independent republic in Ireland. But why waste words? Before ever the representatives of the civilized powers met at Paris to sign its birth certificate, Mr. Kellogg's "naked formula" had been clad in flowing garments of futility.

What then are we to conclude from the record of idealistic pacifism during the past century? That civilized humanity should shrink from the ever-increasing horrors of war, that mankind would fain seek a sure way to permanent peace, is self-evident. But it is equally evident, from the record of the Holy Alliance and the League of Nations, that permanent peace can never be ensured by multilateral treaties and solemn pacts, but that when it comes—as assuredly it will hereafter—it must result from the material well-being and wisely directed education of the masses. The only effective preventive of war lies in such a triumph of the collective intelligence of humanity over its collective folly as will produce conditions of economic prosperity and intellectual culture sufficient to remove from every nation the temptation to improve its position at the expense of its neighbors. Until the civilized nations have learned (as they are gradually learning) to check the multiplication of their underbred and underfed millions, these must inevitably continue to be periodically reduced by nature's positive checks of famine, disease and war. History proves beyond all question that, when it comes to choosing between these three evils, the general body of citizens

will always prefer the risks of war to the certainty of the other two. Let the closet philosophers evolve their "naked formulae"; let the pacifists dream their dreams of filling hungry bellies with smooth words, the fact remains that congested industrialism on the one hand and the world's diminishing margin of food supplies on the other have produced social and economic conditions in themselves fraught with countless causes of strife, and that these can only be overcome by systematic education of the masses in elementary economics, sociology and the philosophy of citizenship. The peace problem with which the world is confronted today is the problem of finding food and elbow-room for already congested and rapidly growing centers of industrialism—a problem which the makers of peace pacts complacently ignore, but to which their competitive policies in armaments bear eloquent testimony. The truth of the whole matter was clearly stated by Mill long ago, when he said "the triumphs of science over the powers of nature can never become the means of improving and elevating the universal lot, until, in addition to just institutions, the increase of mankind shall come under the deliberate guidance of judicious foresight." Political idealists continue to proclaim their faith in just institutions, but the root cause of war, the grim law of population, remains so mysteriously beyond the ken of priests, pacifists and politicians, that it would almost seem as if the providence which shapes our ends intends that the sorry scheme of things, which compels mankind to continual strife, should not be remoulded for many a day to come.

EUROPE AND THE KELLOGG TREATY¹³

A good many statesmen and diplomats gathered in Paris for the signature of the multilateral treaty to renounce war. It was my good fortune to encounter an old friend among them.

¹³ By Arthur Bullard. *Outlook*. September 12, 1928.

What, I asked, does Europe think of Mr. Kellogg's treaty?

That, he replied, is not a good question. It is more important to know what Europe will do than to know what it thinks about the treaty, and it is even more important to know what Europe hopes about the treaty.

First: What will Europe do about the treaty? Europe will sign. That was a foregone conclusion. No one of the different countries is in a position to offend the United States and it has been made clear to every one that your Government takes it very seriously and would be gravely resentful at any country which refused to sign. Europe will sign.

What does Europe think about the treaty, he said after a moment's hesitation, is very much more difficult to answer. I doubt if any two Europeans think exactly the same thing. We never know quite what to think about Americans. At one moment we are impressed by your practical common sense—your success in material things is obvious. The next moment we are equally impressed by your apparent faith in mere words. We used to think that Wilson sometimes used words loosely—as though there were some health-giving magic in sonorousness. "Self determination." "A world safe for democracy." At times it seemed to us that he was not so much interested in the hard work of giving meaning to the phrase as he was in polishing it. But when we read this treaty of Mr. Kellogg's and *think* about it, it seems to us even more a matter of words, even less connected with the realities of hard work necessary to give the words effect, than anything Mr. Wilson ever proposed to us.

I can illustrate the way we get bewildered by your methods in another field, much less important, but to me typical. I have had to attend some of the opium conferences at the League of Nations. Opium smoking used to be a regrettable vice of the Far East, modern chemistry has brought the "dope menace" home to the western

world. It is a difficult problem, because the commodity is so small and so easily smuggled. Well, we had been working on it for a couple of years, not making much progress, but a little. Suddenly an American delegation turns up and they say that it is easy. All that is necessary is to stop the planting of the poppy from which opium is made. Could anything be simpler? The only trouble is that an unkind providence has arranged that the poppy grows most luxuriantly in those countries over which a European diplomatic conference has a minimum of influence. What is the gain in outlawing poppies when we can't stop them from growing?

When we tried to point out the facts of the situation to these American friends and said that as we did not see any practical way to prevent the Persians, Turks and Chinese from growing opium, we thought it best to see what we could do to control the evil in the areas over which we had authority, they said that was sinful—a compromise with evil. I am sure that the gentlemen of the American delegation were quite sincere—even more sure that the American ladies who surrounded them were sincere. We Europeans must have a blind spot—we cannot see that this method of denouncing evil cures it.

We think in much the same way about this Kellogg treaty. There has been more serious work done to prevent war since the Armistice than in all the centuries before. Besides the League of Nations, we have created a World Court. We made a big step towards stable peace at Locarno. We are working on more treaties of the same nature. The rapprochement between the former enemies has been indeed remarkable. This business of peace appears to us exceedingly complicated and difficult, we are working at it from every angle. Besides the ceaseless diplomatic work, we are beginning, in a small way, with these international cartels to eliminate the more ex-

treme and dangerous forms of economic rivalry. All our educational authorities are working at it, hoping that the next generation will be less inclined to the war frenzy than its predecessors. We may have been stupid about it, but we certainly have not been idle. If we fail to organize the world on a basis of peace, it will not be because we have not tried.

Then Mr. Kellogg, who has not shown any very keen or sympathetic interest in our efforts to establish peace, announces to the world that he has discovered a much simpler way of doing it. If we all hold up our right hands and recite in unison: "I renounce war as an instrument of national policy," the job will be done. Are you surprised that the proposal does not appeal to our intellects?

We will sign the treaty which Mr. Kellogg offers. Partly because we do not want to offend your government—not a very dignified reason—and partly because we believe that in time, as circumstances arise, it will be given a meaning, although we cannot as yet see it. It appears to us—if I may use an illustration from your own political life—like an Eighteenth Amendment without any Volstead Act to enforce it. We all promise that if anybody ever starts a war in the future, we will shake our fingers at them and call them bootleggers.

Come, come, I interrupted, you must admit that there is a difference. Europeans do not want a war half as much as most Americans want a drink.

My hope of lightening the conversation by this weak attempt at a jest was deceived. My friend flushed angrily. He was evidently at pains not to let his feelings get the better of him.

What is it, he demanded, that makes you talk and think like that? Is it your Puritan tradition? It seems medieval to us. Can you think only in terms of sin and virtue? Do you really think that the serious menace of

war comes from naughty men who want war and that all there is to this problem is to persuade these naughty men to renounce their sinful ways?

No, if we allowed ourselves to believe that that is what you think of us, we could not help feeling that it was so insulting—so undeservedly insulting—that we would lose our tempers completely and that is one thing which no friend of peace can afford to do.

At best it is rather hard for us to keep our tempers when Mr. Kellogg asks us to *renounce* war—as though it were something sinful but attractive—like making love to your neighbor's wife. Does he really think that we Europeans are so depraved that we like war—that it would be an act of self-denial for us to give it up, to renounce it?

To us, who have been working as wisely and as earnestly as we know how to stabilize peace—and we have made progress—that does not seem to be the trouble. We are not worrying about those pathological few who want war. Our problem is how to realize the hopes of the great majority of people who want peace. I doubt if there was ever time when the great mass did not yearn for peace, yet neither we nor our fathers nor our ancestors of any generation have discovered how to insure it.

It is rather as though Mr. Kellogg should ask us to sign a treaty to renounce poverty. Probably as many people have suffered from poverty through the centuries as have suffered from war. But to solemnly renounce poverty would not give us prosperity. That also is a problem which the statesmen of this old world must face. We never were as rich as you are and the war has made us poorer. We have a tremendous task—not of words and formulas—to build up a decent prosperity for our people. Here we must stimulate one industry, while in another we are producing more than we can sell. Take this last report of the British coal industry. Nearly a quarter of a million miners for whom there is no hope

of work at the trade they know. Somehow they and their families must be moved to other gainful occupations. Every country in Europe is facing similar problems, unemployed, currency dislocation, crises of one kind or another. There is no panacea. All we can hope for is gradual amelioration. Building up a little here, a little there. Renouncing poverty will not help us. Charles Darwin took for his motto: "Dogged does it." That is the only way we'll regain prosperity.

And so we feel about this problem of war. It is hard for us to keep our tempers when you ask us to renounce it. The implication that we like it stings. I am sorry that I showed my temper. We won't get anywhere by getting mad. And it really does not matter so much that we get irritated when Uncle Sam talks to us like naughty children. The thing which is important is to make your people realize—to go on trying doggedly even when we fail—to make your people realize that we are terribly in earnest in this work for peace. Our way may seem wrong to you, but it is vastly important to us that you should understand what we are trying to do.

We think of peace just as you do of prosperity. It is not something that will happen. It won't come to us from wishing. War and poverty are devastating. If we do not get rid of them, they will get rid of us. No end of people have thought up clever, nice sounding, utopian schemes to get rid of them. But they did not work. We're disillusioned about easy schemes. We've settled down to the hard way. The coral insect way. Much of what we have to do is piecemeal. Little jobs. Keeping the precarious peace in the Balkans from degenerating into war. Trying to reconcile the interests of the Poles and Germans in Danzig. Some of the work we are doing is more fundamental. Rooting down into the deep causes of conflict and removing now one, now another. Building up a little international law here and there. Persuading oil men to cooperate instead of competing. Above

all, working at education—trying to make this great motive of patriotism blossom out into something finer than crude, combative nationalism.

We are at work building up—and making men used to—the organization and the instrumentalities of peace. We need new officers to regulate the traffic between nations, just as we have had to organize traffic policemen at our street corners to prevent collisions. And all the time, through all these means, we must touch the minds of men, gradually change the patterns of their thought.

We will sign the treaty, of course, although we do not think that it will help us much, nor make our work more easy. You started out by asking what we thought about the treaty. Some of what we think had better not be said. I apologize for having shown my own resentment at what we all think the insulting implication of the phrases Mr. Kellogg has used. Leaving that aside, we think there is little in the proposal but words. It will not do much to decrease the probabilities of war—we will have to continue, just as before, working our hardest to organize peace. Calling a criminal an “outlaw” does not do much good unless you have some machinery for arresting him and locking him up. With no enforcement act, we do not think that this amendment will accomplish much.

But neither what we do about this treaty nor what we think about it is anywhere near so important as what we hope about it. As I am an unashamed optimist, I find real reason for enthusiasm over the fact that Mr. Kellogg has asked us to join in this treaty. Europe hopes—and it is a matter of vast importance to us—that this treaty and the negotiations leading up to it mean that your great and so powerful country is once more showing an interest in our peace problem. You must remember that we were shell-shocked. Perhaps we exaggerated our fears that your indifference was hostility. Very often it has seemed to us not only that you would not help,

but that you were opposing our efforts to get on our feet. We hope that this is a friendly gesture. We hope that through talking this over—and if it is to mean anything, we will have to talk it over frequently in the future—we'll get to understand each other better.

I suppose that every foreign office in the world has especially instructed its embassy in Washington to send it translations and surveys of your press in these last months. We have tried our best to understand the currents of public opinion in America about this treaty. Some of your editors seem to fear that Mr. Kellogg has fallen into a trap set by the wily M. Briand—they seem to think that any form of cooperation between your country and old Europe must be a disaster to you. Of course our view is just the opposite. We do not believe that we can stabilize peace even in Europe without some sort of sympathy, understanding and cooperation with the United States. Helpful relations might be established in a hundred different ways, and we are perfectly willing to let you choose which way. But in some way we need your encouragement and support. So, on the whole Europe is enthusiastic about the treaty, because we hope that it means the end of the estrangement between Europe and America which followed the Armistice.

THE KELLOGG TREATY¹⁴

European opinion of the Kellogg treaty, as reflected in press comment, ranges all the way from an ardent faith which proclaims that now at last the era of the great peace has dawned to cynical reminders that ever since 1914 treaties have been little better than waste paper. These extreme opinions, as might have been expected, are those of the less powerful and consequently less responsible journals. The more important news-

¹⁴ A survey of comment and opinion from the world's press, by John Bakeless. *Living Age*. November, 1928.

papers and weeklies, though their views represent an infinite variation in detail, are pretty well agreed that the Kellogg treaty represents a distinct advance in international relations; but they also agree in warning their readers against expecting too much or believing that the friends of peace can for a moment relax their vigilance. Many point out that although the powers are perfectly willing to sign peace treaties, they exhibit no enthusiasm for laying aside their armaments, which are now theoretically useless, since every important nation in the world has agreed never to attack any other nation.

The bitterest sneer is that of *Popolo d'Italia*, which is edited by Arnaldo Mussolini, brother of Il Duce. "Of course everybody realizes that henceforth and forever peace reigns upon the globe!" it exclaimed sarcastically, after the treaty had been signed. The opposite mood is exhibited in a moving apostrophe to the French unknown soldier, which M. Alfred Detrez contributes to *L'Intransigeant*: "Unknown Soldier, sleeping beneath the Arch of Triumph, there are no more war trumpets to disturb you! Do you hear me? It is a comrade speaking. Mankind is vowing peace." But *L'Intransigeant*, speaking editorially, is less sanguine. The treaty, it says, "is not a definite assurance of peace. It is only one more guaranty against war."

Paris *Temps*, probably by government inspiration, declaims sonorously: "The solemn declaration thus made in the name of the principal powers interested in the pacific settlement of disputes and likely to be drawn into armed conflict, repudiating war as an instrument of national policy, cannot fail to impress all men of good faith and produce an atmosphere favorable to peace and the development of sound policy." But in the very next sentence it cautiously qualifies these resounding periods: "No one believes that the treaty is in itself sufficient to end war."

M. Marcel de Bare sounds a somewhat similar note of distrust in *La Liberté* (Paris). "Germany is responsi-

ble," he says, "if popular confidence in the Kellogg-Briand treaty is not absolute. What is the chief argument of those who object to it? A treaty, they say, has only very relative value if violating it is to anyone's interest. If one shows astonishment when these skeptics set forth their cynical views, they ask, 'Have you forgotten, then, the scrap of paper in 1914?'"

M. de Bare thinks he detects a certain uneasiness in the pronouncements of the diplomats who signed the treaty. "In all their public statements," he says, "one observes their care to warn the public against excessive hopes. They are all at pains to specify the fact that the treaty is an important step, but that it cannot completely suppress war if the nations—or their governments—really want to fight."

L'Oeuvre (Paris) sounds exactly the opposite note. "If we were not the victims of so many old prejudices, if we had a burning faith and determined will to peace, with what an outburst of enthusiasm we should have greeted yesterday's dawn, and with what enthusiasm our hearts would have swelled," it wrote the day after the treaty was signed. "But this first step, which we have had so much difficulty in taking, toward an enduring and continuing peace does not completely reassure us. Mothers are still clasping children who, they still fear, are not safe from the great menace. Skeptical men are murmuring, 'It is too good to be true.' They do not wish to seem to be deceived. They are still thinking that treaties are only scraps of paper. The will to conquer is the best guaranty of success. The will no longer to run the mad risks of foolish wars is the firmest guaranty of peace. But we do not have the courage to show that will openly. We are afraid of being deceived. We are afraid that someone will say of us, 'The French are easy marks!'"

"We must not for a moment lose sight of the fact that what we have is simply a declaration of principles,"

says the conservative *Journal des Débats*. "This is not the first time that mankind has believed it saw an era of peace beginning, once for all. Terrible disillusionments have always followed exaggerated hopes, as if to remind the human race that a far-reaching moral reformation—which has certainly not yet been accomplished—is the true condition of peace and that behind all their pacts of universal fraternity many an evil thought is still lurking. The text which the fifteen states have signed will have all the more effect if it is hailed with more modesty and is not regarded as an achievement in itself, but rather as a small beginning which cannot in itself suddenly modify the state of the world, and which, above all, cannot crush out the ambitions, passions and greeds which are the underlying causes of war."

M. André Géraud, whose daily column in the *Echo de Paris*, signed "Pertinax," is eagerly read throughout Europe, remains unconvinced. He fears that the Kellogg treaty will interfere with the French defensive treaties and alliances. "France has devoted herself to building up a network of treaties of guaranty and cooperation, as for example with Belgium and Poland," he writes. "Although badly managed, the Locarno treaty belongs in this category. In future, however, the treaties of guaranty will work much more slowly and with more difficulty. Once the aggressor is determined, the signatories of the treaty of August 27 regain their freedom to make war. But as a practical matter, will not the United States, by virtue of this same treaty, feel justified in making its voice heard and will it not be prejudiced against any signatory so bold as to assail an aggressor without previously securing their moral support? And will not this paralyze or delay resistance to an aggressor?"

René Marchand, who is famous for his revelation in *Un Livre Noir* of the pre-war scheming of Entente diplomats and who therefore has no particular reason for trusting the methods of modern diplomacy, takes an optimistic

view of the treaties. In *La Volonté* (Paris), he hails the treaty as a first step toward European federation. "Although it is still too great a conception for some minds among us, the American idea of a United States of Europe, as the only thing that can assure us a prosperous and rational existence, unquestionably is the future formula to which even the most out-of-date nationalists will one day have to subscribe. . . The Kellogg treaty, by cementing an effective agreement among the European states to guarantee the present equilibrium from the threat of another conflict, establishes the basis we need for a unified Europe."

On the day of the signing M. M. Hamel wrote in the Parisian trade-union newspaper, *Le Peuple*: "Let us not attempt to say that the agreement signed today will make war forever impossible. But it will render the application of force in international relations more difficult. It will make more concrete the nations' desire for peace, it may provide a new basis for the reorganization of the world. It is no more than a great promise, but so fine a promise that it makes one wish to transform it into solid reality."

"The merit of the Briand-Kellogg treaty is that it adds a moral element to guaranties already existing, without destroying any of them. It cannot therefore be an obstacle in any future work for peace."

In an editorial article headed "*Le pacte au double visage*," the *Journal de Genève* observes: "It is possible to have two contradictory but equally well founded opinions on the pact which the representatives of the greatest powers in the world are signing in Paris. It all depends whether you look at it from the European or the American viewpoint. For Europe, the treaty to which Mr. Kellogg's name is attached—though he is not its author—marks a considerable step forward on the road to peace. But for Latin America and some other parts of the world, it marks a retrogression when

compared with the Covenant of the League." William Martin, the famous editorial writer whose articles are a feature of the *Journal de Genève* and are widely read, suggests that the real meaning of the treaty is that "American and British imperialism are proceeding to divide the world between them," an opinion which is echoed by the Russian press. In a subsequent article M. Martin speculates on the possible rejection of the treaty by the Senate: "The other day an American asked this question in a club: 'What will Europe think if the American Senate declines to ratify the treaty?' The reply was full of feeling: 'Europe is so used to seeing the American Senate reject treaties negotiated by the American Government that nobody will say anything at all.' It is not our belief, however, that the Senate will dare reject the treaty. Perhaps it will limit the treaty or give it a restrictive interpretation. But *arrière-pensées* and mental reservations fortunately cannot accomplish much against written texts, objective facts and historical necessity."

In Berlin, *Germania*, the moderate organ of the Catholic Centre Party, compares the Kellogg treaty to the mediaeval effort to limit warfare by the "truce of God." It expresses the hope that "the treaty of 1928 will bring to realization the dreams of peace of the year 1028." Writing in the *Berliner Tageblatt*, Herr Herbert von Hindenburg, a member of the German diplomatic service who is distantly related to President von Hindenburg, reviews at length the history of the Bryan treaties, which France and England signed in 1914, but which Germany did not sign, thereby making possible the American declaration of war against her in 1917. Regarding this as one of the worst mistakes of German diplomacy, Herr von Hindenburg takes a distinctly hopeful view of the Kellogg treaty. "Again today we hear the voices of those who think the Kellogg treaty utopian, or those who suspect the United States of some scheme for enslaving the rest of the world. It is perfectly

clear that America needs a peaceful world in which people are producing and consuming. In this respect her interests are identical with ours. Utopian? Only if mankind strives toward ideal conditions can it hope to make life endurable upon this globe of ours. The new Germany, devoted to peace, will find herself on the right road if she adheres without reservation to the humane American proposal whose previous history is so interesting—though so regrettable—for us Germans.”

From Czechoslovakia comes the somewhat doubting voice of the *Prager Tageblatt*. “Europe knows that the peace it has today is by no means an ideal peace, but Europe is struggling to retain it, knowing that even such a peace is better than none.” The *Tageblatt* also makes the point that the peace treaty has led to no reduction in armaments. “We shall be completely at ease,” it says, “only when no more air manoeuvres are being held over London or any other city, when no more armored cruisers are built and when the old weapons are laid aside.” This view of the matter is very frequent.

Mr. Lloyd George, in a series of syndicated articles which have been published throughout the world, makes the same point when he says, “The rejoicing amongst the genuine advocates of peace based on judgment and not on violence has been abated considerably by the reservations demanded by France (reechoed by Britain) and accepted by Mr. Kellogg in his famous speech.”

The Paris Communist daily, *Humanité*, frankly sneers: “‘Outlaw’ war? Why, French imperialism is already increasing the military budget for 1929 by a billion francs, calling up reserves and planning an economic mobilization! . . . The workers will not let themselves be ensnared by the ‘pacifist’ declarations of the profiteers who make money out of slaughter. They will range themselves behind the red flag of Communism.”

“The Americans, the British, the Italians, the Czechoslovaks and the rest are under no illusions as to the significance of this treaty,” says the conservative *Figaro*

(Paris). "Not a warship the less in the British fleet, not a single cannon the less in Italy! We shall presently see our politicians, journalists, professors, schoolmasters taking the treaty as a text for sermons on 'moral disarmament.' That is, they will set to work to strangle the military virtues which are not merely the source of great and warlike deeds, but the support of all civilization. The existence of the treaty will afford encouragement for a reduction of effort in a democratic society which is already only too much inclined to let things slip.

"Here is Germany, through M. Stresemann's mouth, declaring herself ready to abandon her national industry—war. That is all very well, but does anyone think that she will at the same time give up her imperialistic ideas? See her—already alive, hard at work, producing, growing, throwing out blandishments toward Austria. Peace is the means that she will use to conquer the world now that she has been disappointed in war. She is hard at it already."

From the Viennese Socialist newspaper, *Arbeiter-Zeitung*, comes a bitter and skeptical wail. Reminding its readers of the high hopes with which the Peace Conference was greeted and their ultimate disillusion, it exclaims sarcastically: "Foreign ministers and diplomats whose business it is to make political preparations for war—these are the men who renounce it! It is as if the great freebooters should assemble and sign a treaty for the exploitation of the poor. All the fundamental hocus-pocus and insincerity of bourgeois society finds its expression in this diplomatic assemblage in Paris. Even Kellogg, the man whose name the treaty bears, and who discovered the formula about 'renouncing war as an instrument of national policy,' comes from the very nation that has reduced the little Latin American republics to the worst kind of slavery with its marines and has done the same to the greater Latin American

republics with its millions; from the very country that wants to build itself the greatest fleet on earth and enter into an armament competition with Great Britain and Japan."

The London *Spectator*, always interested in furthering the cause of world peace or improving Anglo-American relations, regards the treaty with rather temperate approval. "This," it says, "is the best we can do in a world where nations are at different stages of civilization or hold different views of religion or morality, for who can say that no Asiatic or even African race may ever run amok? But such a solemn declaration of high purpose by the leading nations of two hemispheres is a mighty bulwark against war. More and more will every nation susceptible of shame feel that it cannot begin a war. That is the spirit which the world is rightly trying to foster. Written treaties may be broken by governments who are careless of honor or frightened of holding to the consequences, though a rupture may lead logically to war: but war will not follow if the spirit has thriven which makes the public opinion of every nation say, 'We cannot begin a war.' It is the duty of the world to foster this spirit, not only for our own generation: even more do we owe it to the next. . . It is for us to see that our successors grow up, not merely struggling to avoid war, but simply not considering war as an instrument to hand. Towards this frame of mind the pact is another step on the road along which the League is marching."

"The whole affair looks like a cloudy sunrise," says the Tory *Saturday Review* (London). Its reasons are bluntly stated: "There has been too much wavering, backing and bargaining about this pact. People have not forgotten that Mr. Kellogg himself declared it at first to be 'fantastic and visionary,' while the reaction of President Coolidge was decidedly unfavorable; that when America finally made up her mind to mother it, the

change was supposed to be a covert attack against the League of Nations; finally, that this so-called outlawry of war includes war in its very wording. When Mr. Kellogg says that it debars no nation from its right to self defense, the admission means nothing if not that it is the duty of a nation to be sufficiently armed, which, less than a fortnight ago, President Coolidge was solemnly proclaiming. Plain newspaper readers find it difficult to reconcile the idea of sufficient armament with the idea of disarmament."

"Whether the spectacular ceremony, of which at least the sounds and speeches were broadcast all over Europe and America, represented a landmark in the history of civilization or merely an episode of political farce, is a question which no one at present can answer with confidence," says an editorial note in the *New Statesman*, London Labor weekly. "We are not altogether cynical or hopeless about the value of this new pact, but we should certainly like to see some concrete evidence of the coming of the new spirit which it should bring—if it means anything at all."

The *Nation and Athenaeum* (London), which reflects the views of Mr. John Maynard Keynes, author of *The Economic Consequences of the Peace*, adopts a slightly skeptical but on the whole open-minded attitude: "The value of the pact depends on what follows its signature. No reference to unpleasant actualities, such as the Rhineland, was allowed to mar the harmonies of the proceedings; but it is by such questions that the sincerity of the signatories will be tested."

In a leading article elsewhere in the same issue, the *Nation and Athenaeum* is a little more optimistic: "For the first time, the idea of war as a means to an end is definitely ruled out of court, instead of merely being relegated to the position of a last resort."

There is singularly little discussion of British and French reservations, but the few writers who do com-

ment think them unwise. Robert Dell, a well known student of foreign affairs with distinctly Labor sympathies, writes in the *New Leader*, a London Labor weekly, "Sir Austen Chamberlain has been allowed to torpedo the Kellogg pact. We are still tied to France as we have been since 1904, although it is plain enough now that, if there had been no Entente, there would probably have been no war."

In a series of articles on the treaty and its implications which he contributes to the *Manchester Guardian*, Mr. W. Arnold-Forster proposes that the various governments which have made reservations shall gradually abandon them. "The reservations—or rather the declarations made by some of the chief signatories—are extremely damaging," he writes, "and criticism of these reserves may easily lead people to suppose that the pact itself is worthless, or even that all pacts, all treaties are valueless. The pact, once ratified, will remain ready for whatever use we can make of it, whereas the declarations can be interpreted away or presently thrown over. So, whilst we work for the annulment of the reservations, we should be careful not to defeat the first object of the pact."

The *Guardian* editorially expresses its fear that "the pact, taken in conjunction with the reservations, involves no new obligations which diplomacy could not get round if it wanted to. The obligation not to make war is negatived by the reservation retaining every state's right to declare that any specific war has only been undertaken in self defense. The value of the pact, therefore, as has often been said, is not legalistic but moral."

European editors who favor the reservations apparently prefer to say nothing about them. In Japan, however, *Chugai Shogyo*, a leading commercial paper, says bluntly that "the treaty is by no means ideal, but has been made practical through incorporation of several reservations and exceptions."

The Russian press greets the pact with scant enthusiasm. It fears that the signing of the treaty will have no lasting effects and that there is an immediate danger that the world may again fall into two great groups striving for mastery as in 1914. *Izvestia* suggests that these groups may be headed by England and America. *Pravda* regards Germany as America's only friend in Europe. To a certain extent, however, this opinion must be discounted as an attitude ordinarily to be expected on the part of the Soviet press toward any achievement of the "capitalistic" governments.

Japanese opinion seems to favor the treaty. Tokio *Nichi Nichi* declares that "incomplete as it is, it should be valued because it is a link connecting America and the League." This last suggestion is not made in Europe, which has learned by bitter experience that American participation in the League is not a likelihood of the immediate future. Osaka *Mainichi*, however, says much the same thing: "The immediate effect of the treaty is the participation of America in the international concert." But *Mainichi* qualifies its enthusiasm with the observation that "the authorization of defensive war and the absence of sanctions are notorious defects." *Hochi* says that "the outlawry treaty will not be sufficient to stamp out the causes of war, but it will at least help to prevent hostilities."

A survey of the foreign press leaves one with the distinct impression that Europe is on the whole more inclined to be skeptical than America or Japan. To the old world, with its ancient jealousies, the problems of war and peace are more immediate and more vital than to the new; and in consequence it is likely to scan proposed panaceas with a more critical eye.

One can discern at least two general trends in European press comment. As a group, continental editors are glad to pass over the reservations and their bearing on the treaty's prospects of success. This is presumably

due to a desire to have it taken for granted that the reservations are part and parcel of the treaty itself. British journals, on the other hand, discuss the reservations frankly and do not hesitate to suggest that reservations made by their own Foreign Office may prove stumbling blocks, and should be withdrawn.

Throughout Europe there is a general tendency to ask the obvious question: "What effect will the treaty have on disarmament?" Though a few optimists may hope that it will at least be followed by a reduction in armaments, the more general inclination is to survey the tremendous strength of modern armies and navies and to ask whether any peace treaty signed by the powers which support them can possibly survive.

One slight but significant indication that all is not yet concord among the nations is the almost invariable French designation of the treaty as the "Briand-Kellogg treaty," whereas in the United States it is usually called simply the "Kellogg treaty."

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